No. 14866

United States
Court of Appeals
for the Ninth Circuit

A. M. ANDREWS COMPANY OF OREGON and
A. M. ANDREWS OF ILLINOIS, INC.,
Petitioners and Respondents,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent and Petitioner.

Transcript of Record

Petition for Review and Petition for Enforcement of Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —1-25-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

United States of America

Before the National Labor Relations Board
Division of Trial Examiners

Washington, D. C.

Case No. 14-CA-1208

A. M. ANDREWS COMPANY OF OREGON and A. M. ANDREWS OF ILLINOIS, INC., and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. William F. Trent, for the General Counsel.

Messrs. A. M. Andrews and John A. Tuttle of Portland, Ore., for Respondents.

Messrs. Fred Carstens, of St. Louis, Mo., and Hubert Rushing, of Carterville, Ill., for the Union.

Before: George A. Downing, Trial Examiner.

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in St. Louis, Missouri, on September 20, 1954, pursuant to due notice. The complaint and amended complaint, issued on June 28 and August 27, 1954, respectively, by the General Counsel of the National Labor Relations

Board[1] and based on charges duly filed and served, alleged in substance that Respondents had engaged in unfair labor practices proscribed by Section 8 (a) (1) and (3) of the Act (a) by locking out their maintenance and production employees on or about June 1, in order to discourage membership in the Union, because they had joined or supported the Union, (b) by polling and questioning their employees concerning their union activities, sympathies, etc., and (c) by encouraging their employees to form an independent union in order to avoid bargaining with IAM.

Respondents answered, denying generally all allegations of the complaint.

All parties were represented by counsel or by other representatives, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally and to file briefs and proposed findings of fact and conclusions of law. Oral argument was heard at the conclusion of the hearing, and the General Counsel has filed a brief.

Upon the entire record in the case and from his

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[1] The General Counsel and his representative at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. The Respondent Companies are referred to, respectively, as Respondent Oregon and Respondent Illinois, and the charging union as the Union and as IAM. The summary of the pleadings made below is of the amended complaint. All events herein occurred in 1954.

observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the Respondents; their interrelationship

A. M. Andrews Company of Oregon is an Oregon corporation, with its principal office, place of business, and plant at Portland, Oregon. Its capital stock is owned by A. M. Andrews (345 shares), Alex Marshall (16 shares), Norman Brown (1 share), and Ray H. Lesher (1 share). A. M. Andrews of Illinois, Inc., is an Illinois corporation, with its principal office, place of business, and plant located at Carterville, Illinois. Its capital stock is owned by A. M. Andrews, John A. Tuttle, Norman Brown, and Ray H. Lesher, each of whom owns one share. Andrews is president, Brown Treasurer, and Lesher secretary of both corporations.[2] Marshall is vice president of the Oregon corporation, and Tuttle of the Illinois corporation.

Both corporations are engaged in the manufacture of plastic hose sprinklers. The Oregon corporation began operations in 1951. The Illinois corporation was organized February 23, 1954, and began actual manufacturing operations in Carterville on April 27, after negotiations between Andrews and a group of local businessmen. Andrews sent two men from Portland to supervise the setting up of the Carterville plant and the training of personnel;

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[2] Lesher resigned as secretary of the Oregon corporation on July 26, and was succeeded by Brown.

and one of them, Jimmy Patterson, became production foreman. In addition, Tuttle, who is Andrews' nephew, was sent to Carterville as the managing agent of the plant.

Separate bookkeepers were employed and separate books were kept for the two companies. However, the Oregon corporation furnished the credit for the Illinois corporation by guaranteeing payment of the latter's purchases; and, following the final shutdown of the Carterville plant on August 3, the inventory, machinery, and equipment were shipped to Portland and taken over by the Oregon corporation to secure its guarantee of the unpaid balance due thereon.

The annual sales of the Oregon corporation (for 12 months ending June 30, 1954) were approximately $943,000, of which approximately $791,000 were to extrastate points. Its annual purchases from extrastate points during the same period were approximately $359,000. For seven months ending July, 1954, the total sales of the Oregon corporation amounted to approximately $573,000, of which more than $210,000 were made directly to extrastate points; its extrastate purchases during the same period exceeded $120,000.

From April 27, 1954, through the month of July, the Illinois corporation sold products amounting to approximately $26,000, of which approximately $22,000 were sold and shipped directly to points outside the State of Illinois. During the same period the Illinois corporation purchased goods from extrastate points amounting to approximately $21,370.

The foregoing facts establish that the relationship between the two corporations was sufficiently close that they may be considered as parts of a multi-state enterprise for jurisdictional purposes. Cf. N.L.R.B. vs. Daboll, etc., 34 LRRM 2791, (CA 9), decided September 17, 1954. And when so considered, it is obvious that Respondents' operations meet the jurisdictional criteria recently announced by the Board for the assertion of jurisdiction. See Vol. 34, LRR Analysis, Nos. 19 and 23.

It is, therefore, found that Respondents are engaged in interstate commerce within the meaning of the Act, and that it will effectuate the purposes of the Act for the Board to assert jurisdiction herein.

II. The labor organization involved

The Union is a labor organization which admits to membership employees of Respondent Illinois.

III. The unfair labor practices

A. The evidence:

The Carterville site was selected by Andrews after negotiations with Godfrey Hughes, of Southern Illinois, Inc. (an organization interested in the industrial development of southern Illinois) and a committee of Carterville businessmen, consisting of Lee Hooker, Mack Steffes, Paul Dorcy, and Wes Hayton. Andrews testified that that industrial group arranged for the financing and construction of the plant building, and that the Illinois corporation entered into a purchase agreement.

The plant began actual operations on April 27, with 5 or 6 employees, and by June 1, it had approximately 38 employees. On May 11 the plant was shut down temporarily, and the employees were laid off by a notice which informed them that the shutdown was due to lack of orders and that they would be notified of recall. Operations were resumed on May 26, and Tuttle then informed the employees that the Company had plenty of material and orders and that, so far as he could determine, there would be plenty of work for the rest of the summer.

During the period of the layoff, the Union (unknown to Respondents) conducted an organizational campaign among the employees and under date of May 27, the Union wrote the Illinois Company informing it that a majority of its employees had authorized the Union to represent them and requesting recognition and a meeting for negotiations.[3]

The Union's letter was received on June 1, at Carterville, by Tuttle, who immediately called Andrews in Portland. Andrews directed Tuttle to close down the plant, and Tuttle posted a notice stating that, effective as of 4:30 p.m. (the regular quitting time), the plant would be closed. The notice speci-

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[3] Following a consent election agreement and the withdrawal by the Union of a refusal to bargain charge, an election was held on June 17, resulting in a vote adverse to the Union. On June 22, the Union filed objections to the conduct of the election which are still pending before the Regional Director.

fied no reason for the closing, and witnesses for the General Counsel testified that there was no shortage of materials at the time.

Shortly after 2 p.m., a committee of businessmen (Hughes, Hooker, Steffes, Hayton, and Phil Heckle) appeared at the plant, called a meeting of the employees during work time, and addressed them on the subject of the Union and its request to bargain. The witnesses were agreed that Hughes read from the Union's letter to the Company, and three of them testified that Hughes went into the office to obtain it. Though neither Tuttle nor Patterson was present during the meeting, Evelyn Baltimore testified that she saw Tuttle in the office; and Patterson's presence in the plant was established both before and after the meeting.

Hughes, who acted as chief spokesman for the group, stated that he had had a phone call from Tuttle, and after reading from the Union's letter requesting bargaining, he said that the notice on the bulletin board that the plant was closing was Andrews' answer to the letter, and that Andrews would not tolerate a union in the plant. Hughes continued that if the notice was still on the bulletin board at quitting time, it would mean that there would be no more work, and that the plant would be closed down and would move back to Oregon. Hughes also said that though he could probably get another plant into the building, it would take approximately six months to do so, and he could not guarantee that any of the Andrews employees would have jobs there. Hughes inquired whether

the employees would reconsider and would continue to work as before, without a union, and stated that if they would, he would call Andrews and see if he could get the notice taken off the board before 4:30. Hughes suggested that the employees take a vote on the question, but stated that he was not authorized to call one.[4]

Thereupon two of the employees went into the office and procured slips of paper which were distributed among the employees in the presence of the committee. Since it was understood the ballots were to be signed, many of the employees apparently did not cast votes, and the slips were destroyed. Thereupon a second vote was called for (either by Hughes or Steffes) by a show of hands; and when a majority voted to continue working without a union, Hughes went in to the office again to place a phone call to Andrews. The meeting had lasted from about 2:10 p.m. until after 3:00 p.m.

Hughes did not report back to the employees. The notice was still on the board at 4:30 p.m., and Patterson paid off the employees in full, including pay for the time spent in the meeting with the committee.[5] The plant has not since operated except

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[4] At some point during the meeting the employees raised a question about their wage rates and about raises. Hooker went in to the office to "see Mr. Tuttle and get the straight of it," and came back with the information the employees sought, stating that it "was straight from the office."

[5] At the time of the previous shutdown on May 11, which also fell on a Tuesday, the employees had been paid only through the workweek which ended the previous Friday.

for two or three days in June or July, when four or five employees were called in to complete a shortage on a government order. On August 3, the Carterville operations were terminated permanently, the inventory and machinery being shipped to Portland.

Aside from the foregoing, the only evidence of unfair labor practices was undenied testimony by Robert Ogden that sometime before the May 11 shutdown, and prior to the IAM's campaign, his foreman, Patterson, had a discussion with him concerning unions, during which Patterson said he thought it would be better to have a company union among the employees, and that he did not think Mr. Andrews would stand for a large union to come into the plant. However, that isolated instance of the expression of personal views by a minor supervisor cannot be found to constitute an unfair labor practice. The conversation appeared to be a casual one, devoid of either coercive intent or effect. Thus Ogden's testimony contained no indication that he regarded Patterson's remarks as other than an expression of his own opinion, or that Ogden assumed that Patterson was speaking for, or that his views reflected the views of, management. There is accordingly no support in the record for the allegation of the complaint that Respondents encouraged their employees to form an independent union.

Respondents offered no refutation of any of the foregoing evidence. Tuttle admitted that he called Andrews immediately after receipt of the Union's letter of June 1, and that Andrews thereupon di-

rected the shutdown. Andrews admitted that Hughes called him on June 1 and tried to persuade him to keep the plant running a few days as Hughes felt he could straighten out the "union trouble" with the employees. Hughes requested authority to direct Tuttle not to shut down. Andrews refused, telling Hughes he would not permit a labor union to dictate his plans, and that he was closing the plant down.

Andrews testified that the shutdown was due, as in the case of that of May 11, to a mounting inventory of completed products and to a lack of orders, that it was intended "for the time being" as a temporary shutdown, and he implied that the decision had been reached prior to the receipt of the Union's letter. He and Tuttle testified that at the time of the earlier shutdown there were on hand some 850 dozen sprinklers, which number had been reduced to about 400 dozen on May 26, when operations were resumed; that daily production was around 2,500 to 3,000 (i.e., between 200 to 250 dozen) on May 26, 27, and 28, and that on May 28, the inventory had increased to some 1,250 dozen. Andrews testified, however, that with a holiday coming up Monday, he decided to give the employees the paid holiday and one day's work on Tuesday, and then close the plant until the inventory was reduced again. Andrews' testimony included no explanation as to the time when the decision was reached, or how, in view of the intervening week-end and Memorial holiday, he could have become apprised of the May 28 inventory prior to

Tuttle's call on June 1. Indeed, Andrews admitted that the order to close the plant was not given until after he got the call from Tuttle.

B. Concluding findings:

There is no denial, on the record, of the acts and statements which the General Counsel's witnesses testified to, as summarized above. However, the record and the contentions of the parties present three main questions for determination, as follows: (1) Whether Respondents are responsible for the acts and statements of the businessmen's committee on June 1; (2) whether the shutdown was a lockout which was made to discourage Union membership; and (3) whether Respondent Oregon was a co-employer of the Carterville employees or was otherwise responsible for remedying the unfair labor practices which are found herein. Those questions will be considered in order, the question of Oregon's responsibility being reserved for final consideration since it relates more directly to the framing of an appropriate remedy.

1. Responsibility for the acts and statements of the businessmen's committee.

It is sometimes difficult to determine the extent to which principles of the law of agency are to be applied in fixing employer responsibility for the acts and statements of outsiders who intrude into organizational campaigns of employees. For instance, in L & H Shirt Company, 84 NLRB 248, the Trial Examiner had based his findings of company responsibility for plant speeches by local busi-

nessmen on recognized principles of the law of agency, e.g., that the affirmance or adoption of unauthorized acts may be inferred from the failure to repudiate them, where the circumstances are such as to require the principal, knowing of the acts, to disavow them unless he approved. Id., p. 274, and cases cited. The Board, though affirming the Trial Examiner's finding of company liability, did so "without passing * * * on whether such liability may be based on technical agency principles," holding that "in view of the circumstances in which the statements were made, the Respondent was under a duty to repudiate and deny their validity" and by its failure to do so, it "became responsible for the utterances." Id., p. 252.

More recently, however, the Board has acknowledged the applicability of agency principles in determining the question of company responsibility for the acts of a citizens' committee. Thus, in Livinston Shirt Corp., 107 NLRB No. 109, the Board held that the evidence failed to establish "the existence of the requisite prima facie agency relationship", observing that:

The record is barren of any evidence that Respondent Livingston aided, abetted, assisted, or cooperated with the Respondent Citizen's Committee. Nor did Respondent Livingston allow the Respondent Citizen's Committee the use of company time or property for the distribution of antiunion argument, by either written or spoken words. We therefore find no merit in the agency contentions of the General Counsel.

Among the cases there cited by the Board, Waynline, Inc., 81 NLRB 511, and Armco Drainage and Metal Products, Inc., 106 NLRB No. 121, are more closely in point here. In the Armco case the Board found that the employer was responsible for acts of interference engaged in by individual local citizens who made statements to employees implying that the employer would remove his plant from the locality if the union won the election, since the employer aided, abetted, assisted, and cooperated with those citizens in their campaign against the union. In the Waynline case, the Board held that:

In view of the actions of the Respondent's supervisors in allowing the Committee to interrogate Faulk and Pye concerning union activities, to urge them to abandon the Union, and to promise them a wage increase, and in view of the Respondent's subsequent payment of these employees for the time they spent with the Committee, a clear responsibility devolved upon the Respondent to disavow the actions of the Committee. [Citing Fred P. Weissman Company, 69 NLRB 1002, 1019, enf'd 170 F.2d 952 (CA 6.)] By its silence under these circumstances, the Respondent clearly, as the Trial Examiner found, acquiesced in and approved the interrogation of and promise of benefit to, its employees.

The evidence in the present case plainly supplied what the Board found lacking in the Livingston case, supra. Thus, the Hughes committee was subsequently identical with the one with which Andrews had negotiated for the establishment of the

Carterville plant and which had sponsored or financed the construction of the building which was occupied by the plant. The committee appeared on the scene immediately following Tuttle's receipt of the Union's bargaining request and following a call from Tuttle to Hughes. It called a lengthy meeting of employees which was devoted to attempting to settle the "Union trouble" and to procuring, through threats and promises, the employees' renunciation of the Union. During that meeting Hughes and Hooker procured from the office (in which Tuttle was seen) the Union's letter to Tuttle and information to answer employee questions concerning their wage rates.

The foregoing circumstances, particularly the timing, the place, and the subject matter of the meeting, established not only knowledge and acquiescence, but actual assistance and cooperation by the Company in permitting the use by the committee of Company time and property for coercive acts and utterances which it made no attempt to disavow. Indeed, the Company paid the employees for the time spent with the committee.

It is, therefore, concluded and found that Respondent Illinois[6] was responsible for the acts and statements of the committee and that it thereby engaged in interference, restraint, and coercion within the meaning of Section 8 (a) (1) of the Act, as

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[6] It is found under Section 3, Infra, that Respondent Oregon was not responsible for any of the unfair labor practices which were committed at Carterville.

follows: Hughes' statements that the shutdown notice was Andrews' answer to the Union's bargaining request and that Andrews would not tolerate a union in the plant; his threat that the plant would be moved back to Oregon and the building leased to another tenant; and by conducting, in the foregoing context, the two polls by which the employees' renunciation of the Union was sought (Cf Richards and Associates, 110 NLRB No. 23).

2. Was the shutdown a lockout made to discourage Union membership?

The General Counsel's evidence, considered alone, plainly established the allegation of the complaint that the shutdown of June 1 was a lockout which was made to discourage Union membership and activities. Thus, the plant had operated for only three working days following the resumption of operations on May 26, and Tuttle's statements then made that there were sufficient orders and materials on hand for the summer. The shutdown was ordered precipitately, immediately on receipt of the Union's request for recognition and bargaining; and it was followed immediately by the visit of the committee of businessmen who informed the employees in express terms that the shutdown notice was Andrews' answer to the Union's letter, that Andrews would not tolerate a union, and that he would move the plant away. The foregoing facts, none of which were denied by Respondents, plainly showed that the advent of the Union was responsible for the timing of the shutdown (Cf. Tennessee-Carolina Transportation, Inc., 108 NLRB No. 179), and es-

tablished a case of discrimination under the Act unless overcome by countervailing evidence on Respondent's behalf.

But the evidence which Respondents offered was wholly inadequate to overcome the General Counsel's case. Even though Respondents' evidence were accepted literally as establishing a mounting inventory and a lack of orders, it does not establish that the shutdown was made because of those facts. Indeed, Andrews' testimony was wholly unconvincing that any decision was made prior to receipt of the Union's letter. Thus, he admitted that the order was given after Tuttle's call, and it is questionable that Andrews could have become aware of the May 28 inventory figures prior to that call. But even assuming such awareness, his explanation fails to ring true. For if the Company's business and financial affairs were as precarious as he represented, Andrews would not reasonably have decided to augment its losses and inventory by giving the employees a paid holiday plus another day's work. Furthermore, were the shutdown a temporary one and made on the basis of his claims, no reason is suggested why the employees were not properly notified, as on May 11, or why they were paid off in full at the close of the day.

But the final and conclusive refutation of Andrews' claims was furnished by Tuttle's undenied statements to the employees on May 26, that the Company in fact had both orders and materials sufficient to last the summer. It is inconceivable, in the face of those facts, that the Company would have

reopened its plant, recalled all its employees, and resumed operations for only three days of work.

Thus, in character and weight, Respondents' evidence was wholly inadequate to overcome the case made out by the General Counsel; it served only to confirm the conclusion that the shutdown was made to defeat the organization of the employees.

It is, therefore concluded and found that by locking out its employees on June 1, Respondent Illinois (see footnote 6, supra) engaged in discrimination proscribed by Section 8 (a) (3) and (1).

3. Oregon's responsibility for the unfair labor practices.

It is difficult to ascertain the exact nature of the General Counsel's theory insofar as it concerns the status of the Oregon corporation as a party to this proceeding. Though the examiner had assumed, from the facts stated in the margin,[7] that that cor-

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[7] The original and the first amended charge named only the Illinois corporation as the employer, and the original complaint, issued on June 28, named only that corporation as party Respondent. On July 1, and again on July 15, the Board announced widespread changes in the standards which it would thenceforth observe in determining whether it would take jurisdiction of a case. It is questionable whether the operations of the Illinois corporation considered alone, would meet the new standards. However, on August 27, a second amended charge was filed which joined the Oregon corporation as a co-employer, and simultaneously the General Counsel issued an amended complaint which joined that corporation as a party Respondent and which included among its jurisdictional averments a recital of the business operations of that company.

poration was joined to assure the qualification of the case under the Board's new jurisdictional standards, the General Counsel's brief proceeds from the premise that the Oregon Corporation is the Company and the Respondent herein, and that the Illinois corporation is only the name under which the Oregon corporation operates the Carterville plant as a "branch establishment." Further illustrative of the General Counsel's confusion of the identity of his parties Respondent is the reference in his brief to Andrews, individually, as the Respondent "who directs, manages and controls both the Portland, Oregon, and Carterville, Illinois, establishments."

The point assumes importance here because the shutdown at Carterville has now become permanent, and because it is necessary to determine whether Respondent Oregon may be held responsible for remedying the unfair labor practices.

Though the affiliation between the corporations is sufficiently close that the Board may properly consider the operations of both in deciding whether to assert jurisdiction (see Section I, supra), it is not close enough to establish that either corporation is the alter ego of the other (cf. Diaper Jean Manufacturing Co., 109 NLRB No. 152, 34 LRRM 1504, 1507-8; Mt. Hope Finishing Co. vs. N.L.R.B., 211 F.2d 365, 372 (CA 4)); nor does it show that the Oregon corporation was a co-employer of the Carterville employees, that it actively participated in the commission of the unfair labor practices, or that it is to be held responsible for remedying them.

Thus the evidence shows that the two companies were separate corporate entities, which separately owned and operated plants in widely separate localities, which employed separate sets of production employees, and which kept separate books and records. Though Andrews, individually, owned the controlling stock interest in the Oregon company, he did not do so in Illinois. In the latter corporation, for example, Tuttle, Brown, and Lesher were obviously in position to outvote Andrews in all stockholders' meetings, since together they owned 75 per cent of the corporate stock. Cf. Mt. Hope case, supra, at p. 372. Significant also as indicative of separate entities was the fact that though Lesher resigned as secretary of Oregon on July 26, he did not resign his corresponding position in Illinois. Of further significance, particularly in assessing Oregon's responsibility for commission of the unfair labor practices, is the fact that Tuttle, under whose immediate management the Carterville plant was operated, was neither a stockholder nor an officer of the Oregon company.

The evidence also fails to show that common employment conditions existed in the separate plants which the respective Respondents operated, that their operations were integrated, that they had offices at the same address, or that they maintained a common bank account. Cf. Inter-Ocean Steamship Co., 107 NLRB No. 92. This is not a case of a single, or integrated, enterprise, parcelled into production and distribution, or into other convenient segments, by the corporate arrangements of the Re-

spondents themselves. Cf. N.L.R.B. vs. Concrete Haulers, Inc., 212 F.2d 477, 479 (CA 5), decided May 6, 1954. The case is also distinguishable from Somerset Classics, Inc., 90 NLRB 1676, enf'd. 193 F.2d 613 (CA 2), where the Board found Modern Manufacturing Co. to be a co-employer of Somerset's employees and held it responsible for the unfair labor practices committed at Somerset's plant. The Board and the Court emphasized the ownership, control, and operation of the two companies by the same family and the fact that Somerset depended entirely on Modern for its work.

Though the corporate veil may be lifted and the fiction of separate entities may be disregarded on a sufficient showing, the evidence here is not adequate for that purpose. And, as previously observed, there is no evidence that the Oregon corporation actively concerted or participated with Illinois in the commission of the unfair labor practices. N.L.R.B. vs. Lunder Shoe Corp., 211 F.2d 284, 289, (CA 1). Section 10 (c) of the Act empowers the Board to require unfair labor practices to be remedied by those persons who have engaged in such practices. No provision of the Act authorizes the Board to impose the responsibility for remedying unfair labor practices on persons who did not engage therein. Symns Grocery Co. (Supplemental Decision Amended), 109 NLRB No. 58; N.L.R.B. vs. Birdsall-Stockdale Motor Co., 208 F.2d 234 (CA 10).

It is, therefore, concluded and found that Respondent Oregon did not engage in, or participate

with Respondent Illinois in engaging in, the unfair labor practices found above, and that it may not be held responsible for remedying those unfair labor practices.

The Remedy

Having found that Respondent Illinois has engaged in and is engaging in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent Illinois discriminated against its employees by the June 1 lockout. Though the evidence establishes that that shutdown was intended at the time to be only temporary, Andrews' testimony was to the effect that subsequent evaluation of the Company's business and fiscal affairs led to a decision to make the shutdown permanent.[8] It was in the light of those economic considerations (cf. Tennessee - Carolina Transportation Company, 108 NLRB No. 179) that the plant was closed permanently on August 3.

Yet it is clear from the evidence that but for the discriminatorily motivated shutdown, the Carterville plant would have continued operations for some indefinite time after June 1, up to August 3, and that all or many of the employees would have had work during that period. Furthermore, An-

[8] Thus Andrews testified that as of May 31, the Company had "sunk" $71,859.78 in the Carterville operations.

drews testimony showed that the Illinois corporation has not been liquidated, therefore it may conceivably resume operations at some future time in Carterville or at some other location.

It will, therefore, be recommended that Respondent Illinois make whole the employees whose names are listed in Appendix A hereto for any loss of pay they may have suffered as a result of the discrimination against them by payment to each of them of a sum of money equal to that which each would normally have earned as wages during such plant operations as would normally have occurred from June 1 to August 3, inclusive, but for the discriminatory shutdown, less his net earnings during such period, the back pay to be computed in the manner prescribed by the Board in F. W. Woolworth Company, 90 NLRB 289.

It will also be recommended that in the event of resumption of operations at Carterville, or elsewhere, Respondent Illinois offer said employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that, in the event such operations are resumed at a location which is not in the immediate vicinity of Carterville, Respondent Illinois offer to pay the employees involved any necessary and reasonable expense of moving themselves, their families, and their household effects to the vicinity of the plant at which operations are resumed and in which said employees are offered reinstatement. Cf. Symms Grocery Co., supra.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Respondent Illinois' activities set forth in Section III, above, occurring in connection with Respondents' operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing the free flow thereof.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminatorily shutting down its plant and locking out the employees whose names are listed in Appendix A, thereby discouraging membership in the Union, Respondent Illinois has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent Illinois has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, it is recommended that Respondent, A. M. Andrews of Illinois, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Union, or in any other labor organization of its employees, by shutting down its plant and locking out its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Informing its employees that the plant shutdown was its answer to the Union's letter requesting recognition and that it will not tolerate a union in the plant; threatening to move its plant to Oregon; and conducting polls of its employees to procure their renunciation of the Union; and

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

See Consolidated Industries, Inc., 108 NLRB No. 14, footnote 3.

2. Take the following affirmative action:

(a) Make whole the employees whose names are listed in Appendix A hereof in the manner prescribed in the section entitled "The Remedy," supra;

(b) In the event of resumption of its operations at Carterville, Illinois, or elsewhere, offer to the employees whose names are listed in Appendix A immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and in the event such operations are resumed at a location which is not in the immediate vicinity of Carterville, offer to pay the employees involved any necessary and reasonable expense of moving themselves, their families, and their household effects to the vicinity of the plant at which operations are resumed and in which said employees are offered reinstatement.

(c) In the event operations are resumed at Carterville or elsewhere, post in its plant copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately after resumption of operations and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to em-

ployees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(d) Notify the Regional Director for the Fourteenth Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

Dated at Washington, D. C., this 28 day of October 1954.

GEO. A. DOWNING,
Trial Examiner

APPENDIX A

Lucille A. Anderson, Clara Bagwell, Evelyn G. Baltimore, Anna K. Brown, Maggie Lee Calvert, Helen M. Clark, Ruth Ann Elders, Carmen Emery, Maxine D. Emery, Anna J. Eveland, Millie Evett, Jewell Hall, Judith Ann Halstead, Paul Halstead, Myrtle C. Hess, Vera N. Hickam, Pearl A. Hoover, Eleanor Kelly, Lacy L. Lee, Eleanor L. Manning,

June F. Myers, Margaret R. McCluskey, Alice J. North, Bette J. O'Daniel, Robert J. Ogden, Evelyn M. Ollar, Gathel V. Patrick, Laverne Phillips, Madge Popham, Katherine Riggin, Wayne A. Rushing, Peggy Jo Sickling, Elizabeth Ann Smith, Rosalie Stocks, Alberta Mae Tripp, Velma Tygett, Claudia Wynn, Evelyn Yewell, Milo Smith, Elizabeth Beltz.

APPENDIX B

Notice to all Employees Pursuant to the Recommendations of Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Association of Machinists, AFL, or in any other labor organization of our employees, by shutting down our plant and locking out our employees, or in any other manner discriminate in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not inform our employees that the plant shutdown was our answer to the Union's letter requesting recognition or that we will not tolerate a union in the plant, or threaten to move our plant to Oregon, nor will we conduct polls of our employees to procure their renunciation of the Union.

We Will Not in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form, join, or

assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will make whole the employees whose names are listed below for any loss of pay they may have suffered from June 1 to August 3, 1954, inclusive, by reason of our discrimination against them;

Lucille A. Anderson, Clara Bagwell, Evelyn G. Baltimore, Anna K. Brown, Maggie Lee Calvert, Helen M. Clark, Ruth Ann Elders, Carmen Emery, Maxine D. Emery, Anna J. Eveland, Millie Evett, Jewell Hall, Judith Ann Halstead, Paul Halstead, Myrtle C. Hess, Vera N. Hickam, Pearl A. Hoover, Eleanor Kelly, Lacy L. Lee, Eleanor L. Manning, June F. Myers, Margaret R. McCluskey, Alice J. North, Bette J. O'Daniel, Robert J. Ogden, Evelyn M. Ollar, Gathel V. Patrick, Laverne Phillips, Madge Popham, Katherine Riggin, Wayne A. Rushing, Peggy Jo Sickling, Elizabeth Ann Smith, Rosalie Stocks, Alberta Mae Tripp, Velma Tygett, Claudia Wynn, Evelyn Yewell, Milo Smith, Elizabeth Beltz.

We Will, in the event we resume operations at Carterville, Illinois, or elsewhere, offer to the employees whose names are listed above immediate

and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and in the event we resume operations at a location which is not in the immediate vicinity of Carterville, Illinois, we will offer to pay to said employees any necessary and reasonable expense of moving themselves, their families and their household effects to the vicinity of the plant at which we resume operations.

A. M. Andrews of Illinois, Inc.,
(Employer)

By .....,
(Representative) (Title)

Dated.....

[Title of Board and Cause.]

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report and Recommended Order of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

It Is Hereby Ordered, pursuant to Section 102.45 of the National Labor Relations Board Rules and Regulations that the above-entitled matter be, and

it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., October 28, 1954.

By direction of the Board:

/s/ FRANK M. KLEILER,
Executive Secretary

Affidavit of Service by Mail and Return P. O. Receipts attached.

[Title of Board and Cause.]

REQUEST FOR EXTENSION OF TIME to File Exceptions to Intermediate Report and Recommended Order of Trial Examiner, and Brief in Support of Said Exceptions.

A. M. Andrews Company of Oregon, a corporation organized and existing under the laws of the State of Oregon, and A. M. Andrews of Illinois, Inc., a corporation organized and existing under the laws of the State of Illinois, by and through their legal counsel, Maguire, Shields, Morrison and Bailey, 723 Pittock Block, Portland, Oregon, hereby make request for extension of time to file exceptions to the Intermediate Report and Recommended Order of the Trial Examiner in the above titled and numbered proceedings, and to file brief in support of said exceptions, on the grounds and for the reasons hereinafter set forth:

1. That the time allowed in the Order transferring the case to the National Labor Relations Board, for the filing of exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, expires on November 22, 1954;

2. That the Intermediate Report and Recommended Order of the Trial Examiner was received in Portland, Oregon, by A. M. Andrews Company of Oregon, and by A. M. Andrews of Illinois, Inc., on October 30, 1954, and was delivered to the offices of Maguire, Shields, Morrison & Bailey, Attorneys, Portland, Oregon, for consideration of said attorneys, on November 4, 1954;

3. That a transcript of the evidence taken at the hearing before the Trial Examiner is not available to the attorneys for said companies, and, in fact, the representatives of the companies who appeared at the hearing are unable to provide said attorneys with the name and address of the reporter who recorded said evidence at the hearing;

4. That the attorneys for the company have made prompt inquiry of Mr. William F. Trent, General Counsel of the National Labor Relations Board, St. Louis, Missouri, for the name and address of the reporter who recorded the evidence at the hearing, and, by necessity, some time will elapse before the transcript of evidence can be prepared and forwarded to the attorneys for the company;

5. That it appears from the Intermediate Report of the Trial Examiner that Mr. A. M. Andrews and Mr. John A. Tuttle, representatives of

the companies, appeared at the hearing before the Trial Examiner without the benefit of legal counsel, and that the evidence adduced at the hearing in behalf of the companies (Respondents) was meager, if not virtually non-existent, and that such evidence as was so adduced was presented by said company representatives without adequate knowledge of the scope or purpose of said hearing;

6. That it further appears from the Intermediate Report of the Trial Examiner that these proceedings should be reopened for the purpose of receiving further evidence, in order for the National Labor Relations Board to be properly apprised of the circumstances which occasioned the closing down of the Carterville, Illinois, plant of A. M. Andrews of Illinois, Inc., and that fact will be properly developed in the exceptions to the Intermediate Report of the Trial Examiner which will be filed after an analysis of the transcript of the evidence adduced at the hearing before the Trial Examiner;

7. That the further evidence which will be adduced in behalf of the companies (Respondents) in the event these proceedings are reopened, for the purpose of receiving further evidence, are as set forth in the supporting affidavit attached hereto, marked Exhibit A, and by this reference made a part hereof;

8. That the time necessarily entailed in obtaining a transcript of the evidence taken at the hearing, and in preparing the necessary exceptions to the Intermediate Report and Recommended Order

of the Trial Examiner, precludes said matters being completed on or before November 22, 1954.

Now, Therefore, it is requested that the National Labor Relations Board extend the time within which the companies (Respondents) may file exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, and brief in support of said exceptions, to and including the 31st day of December, 1954.

Respectfully submitted,

A. M. Andrews Company of Oregon,
an Oregon Corporation, Respondent

/s/ By A. M. ANDREWS,
President

A. M. Andrews of Illinois, Inc., an Illinois Corporation, Respondent

/s/ By A. M. ANDREWS,
Maguire, Shields, Morrison & Bailey,

/s/ RALPH R. BAILEY,
Counsel for Respondents

EXHIBIT A

State of Oregon,
County of Multnomah—ss.

I, A. M. Andrews, of Portland, Oregon, being first duly sworn depose and say that:

I am President of A. M. Andrews Company of Oregon, an Oregon corporation, and A. M. Andrews of Illinois, Inc., an Illinois corporation;

That the business of A. M. Andrews Company of Oregon now is, and has been since organization of the company, the manufacture and sale of plastic lawn sprinklers, and that the business of A. M. Andrews of Illinois, Inc., was, during the period that said company operated a plant at Carterville, Illinois, for about two months during the year 1954, the manufacture and sale of plastic lawn sprinklers;

That A. M. Andrews of Illinois, Inc., has engaged in no business whatsoever since the Carterville, Illinois, plant of the company was closed on or about June 1, 1954, save and except for two or three days of operation in June, 1954, to complete a government order for plastic lawn sprinklers;

That, due to the moderate weather conditions throughout the nation in the summer months of 1954, the market for lawn sprinklers was substantially below normal, and this is demonstrated by the fact that the sales of A. M. Andrews Company of Oregon were $1,209,637.59 in the calendar year 1953, whereas the combined sales of A. M. Andrews Company of Oregon, and of A. M. Andrews of Illinois, Inc., through the month of September, 1954, were $613,911.45 (Sales by A. M. Andrews Company of Oregon in said period were $585,-542.14, and sales by A. M. Andrews of Illinois, Inc., were $28,369.71).

That A. M. Andrews Company of Oregon provided capital to finance the operation of the plant by A. M. Andrews of Illinois, Inc., at Carterville, Illinois, in aggregate amount of $68,216.90, which

said capital so provided consisted of $5000.00 paid in for the capital stock of the Illinois company, and $63,210.90 loaned to the Illinois company for the purpose of purchasing plastic materials and paying operating expenses, and that said amount so loaned was secured by a pledge of the plastic material inventory of the Illinois company;

That during the period that the Carterville, Illinois, plant was operated by the Illinois company, which said period was about two months, there was incurred an operating loss in amount of $27,460.28, and that said loss was so incurred by reason of the fact that orders for plastic lawn sprinklers were not obtained in sufficient volume to permit said plant to break even or operate at a profit;

That substantially all of the net worth of A. M. Andrews Company of Oregon, and by the same token all of the available capital of said company, was used to provide the Illinois company with capital by way of investment in stock and loans, and this is demonstrated by the fact that the net worth of the Oregon company on December 31, 1953 was $76,696.78, and said net worth on September 30, 1954, without taking into account the loss which must be absorbed by reason of investment in the stock of and loans to the Illinois company, was $89,589.93;

That A. M. Andrews Company of Oregon was compelled to obtain bank loans of approximately $150,000.00 to finance its own operations in 1954, and said company was not in a position to advance

further capital to the Illinois company beyond the aggregate sum of capital in amount of $68,210.90 which was provided by investment and loans prior to June 1, 1954;

That the market for lawn sprinklers in the summer of 1954 did not justify the continuation of operation of the Carterville, Illinois, plant by the Illinois company after June 1, 1954, and if said operation had continued after said date there would have resulted increased operating losses which would have not only forced the Illinois company out of business, but would have endangered the continuation of business by the Oregon Company, which said facts were known to the officers and directors of the two companies prior to June 1, 1954 and was the primary reason for discontinuing the operation of the Carterville, Illinois, plant on or about June 1, 1954.

/s/ A. M. ANDREWS

Subscribed and sworn to before me this 13th day of November, 1954.

[Seal] /s/ RAYMOND L. JONES,
Notary Public for Oregon

[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENTS TO THE INTERMEDIATE REPORT AND RECOMMENDED ORDER OF THE TRIAL EXAMINER Filed with The National Labor Relations Board in the above-entitled and numbered Proceedings on October 28, 1954.

A. M. Andrews Company of Oregon, an Oregon Corporation, and A. M. Andrews of Illinois, Inc., an Illinois Corporation, hereinafter referred to as the Respondents, hereby take exception to the Intermediate Report and Recommended Order of the Trial Examiner, filed with The National Labor Relations Board in the above-entitled and numbered cause on October 28, 1954, on the grounds and for the reasons as set forth in following numbered paragraphs.

1. The trial Examiner erred in concluding that the relationship of A. M. Andrews of Oregon, an Oregon Corporation, and A. M. Andrews of Illinois, Inc., an Illinois Corporation, was sufficiently close that said Corporations may be considered as parts of a multi-state enterprise for jurisdictional purposes, in that it appears from the record that said Corporations were not engaged in the operation of a single unitary business, and that neither of said Corporations was a subsidiary of the other, and that said Corporations were not affiliated in the sense that the stock of each was owned by the same stockholders in the same proportions. (References

to the Intermediate Report and Recommended Order of the Trial Examiner will herein be identified by symbol IR, and the Official Report of Proceedings before the Trial Examiner will be identified by symbol TR.) (IR, p. 2, lines 5 to 60, inclusive; TR, p. 26-27).

2. The Trial Examiner erred in concluding that the operations of A. M. Andrews of Illinois, Inc., an Illinois Corporation, meet the jurisdictional criteria recently announced by The National Labor Relations Board for the assertion of jurisdiction, in that the record shows that there was less than $50,000.00 worth of goods produced or handled which constituted either a direct or indirect outflow into interstate commerce, and the record shows that there was less than $500,000.00 worth of goods received which constituted a direct or indirect inflow from interstate commerce. (IR, p. 2, lines 55 to 60, inclusive; TR, p. 26-27).

3. The Trial Examiner erred in concluding and finding that the Respondent, A. M. Andrews of Illinois, Inc., was responsible for the acts and statements of the Business Men's Committee which appeared at the company's plant on June 1, in that the testimony of the witnesses adduced by the Union with respect to such acts and statements was rank hearsay, and in that the record is devoid of evidence competent to bind the Respondent with respect to any asserted admissions based on such hearsay testimony. (IR, p. 5, lines 49 to 62, inclusive, p. 6, lines 1 to 62, inclusive, p. 7, lines 1 to 14, inclusive; TR, p. 32-89).

4. The Trial Examiner erred in finding and concluding that the shutdown of the plant operated by A. M. Andrews of Illinois, Inc., at Carterville, Illinois, was a lockout to discourage Union membership, in that said finding and conclusion is based on testimony which constituted hearsay of the most objectionable character and on testimony which in any event was not binding on the Respondent, and in that said finding and conclusion is flatly contradicted by the only properly admissible evidence presented at the hearing (the direct testimony of A. M. Andrews). (IR, p. 7, lines 19 to 62, inclusive, p. 8, lines 1 to 12, inclusive; TR, p. 32-89, 101-147.)

5. The Trial Examiner erred in finding and concluding that the Respondent, A. M. Andrews of Illinois, Inc., shut down its plant at Carterville, Illinois, permanently on August 3, 1954, and that there was a lockout of the employees of Respondent on and after June 1, 1954 and to and including August 3, 1954, in that the record is utterly devoid of evidence that the Respondent shut down its plant on any date other than June 1, 1954, and there is a failure of proof that the cause of the shutdown was a purpose of the Respondent to lockout its employees as a means of thwarting union organization. (IR, p. 9, lines 56 to 62, inclusive, p. 10, lines 1 to 41, inclusive; TR, 101-147).

6. The Trial Examiner erred in recommending that the Respondent, A. M. Andrews of Illinois, Inc., make whole certain former employees (as designated in Appendix A attached to the Intermediate Report and Recommended Order) for pay equal

to that which each would normally have earned as wages during such plant operations as would normally have occurred from June 1 to August 3, inclusive, in that the record shows conclusively that there exists no measuring rod to determine what any such former employee normally, or abnormally, would have earned if the plant had operated, and in that the record is utterly devoid of evidence to indicate that the plant operations normally, or abnormally, would or could have been other than what actually occurred, namely, no operations whatsoever except for two or three days in June or July. (IR, p. 10, lines 17 to 26, inclusive).

7. The Trial Examiner erred in attributing undue probative value to testimony to the effect that John Tuttle, an officer and employee of Respondent, A. M. Andrews of Illinois, Inc., stated to the employees on May 26th that the company had plenty of material and orders, and that, so far as he could determine, there would be plenty of work for the rest of the summer, in that in so doing the Trial Examiner ignored the further testimony of a witness for the Union that John Tuttle further stated that "we would run the summer out if things were according to our expectations". (IR, p. 3, lines 23 to 31, inclusive; TR, p. 48).

8. The Trial Examiner erred in concluding as a matter of law that the operations and activities of Respondent, A. M. Andrews of Illinois, Inc., had a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tended to lead to labor disputes burdening and ob-

structing the free flow thereof. (IR, p. 10, lines 45 to 50, inclusive).

9. The Trial Examiner erred in concluding as a matter of law that the Respondent, A. M. Andrews of Illinois, Inc., engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the National Labor Relations Act by discriminatorily shutting down its plant and locking out its employees. (IR, p. 10, lines 54 to 58, inclusive).

10. The Trial Examiner erred in concluding as a matter of law that the Respondent, A. M. Andrews of Illinois, Inc., was engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the National Labor Relations Act by interfering with, restraining, and coercing its employees in exercise of rights guaranteed in Section 7 of said act. (IR, p. 11, lines 1 to 5, inclusive).

11. The Trial Examiner erred in concluding as a matter of law that the Respondent, A. M. Andrews of Illinois, Inc., engaged in unfair labor practices within the meaning of Section 2 (6) and (7) of the National Labor Relations Act.

12. The Trial Examiner erred in concluding that the Carterville, Illinois, plant of Respondent, A. M. Andrews of Illinois, Inc., was not shut down because of mounting inventory and lack of orders, in that said Trial Examiner thereby rejected the uncontroverted testimony of A. M. Andrews as to the precarious financial condition of the Respondent on June 1, and, in fact, at the hearing refused to accept as material financial statements offered by A. M. Andrews which would have established beyond

question that the financial condition of Respondent was such as to make a shut down of the plant on June 1 a necessity. (IR, p. 7, lines 36 to 53, inclusive; TR, 128-147). The Respondents further request that the Board reopen the record and receive further evidence in this proceeding, and that, for the purpose of taking such further evidence, the Board designate and authorize one of its representatives to take depositions in Portland, Oregon, with the object of recording the true and complete facts concerning the financial condition of Respondent, A. M. Andrews of Illinois, Inc., and Respondent, A. M. Andrews Company of Oregon, on June 1, 1954, and the true and complete facts concerning the reason for the shut down on June 1 of the Carterville, Illinois, plant of A. M. Andrews of Illinois, Inc. The taking of depositions as herein requested will disclose that, due to the moderate weather conditions which prevailed throughout the country in the summer months of 1954, the market for lawn sprinkling equipment was far below normal, and that the single product manufactured by Respondents could not be sold in sufficient quantity to justify the operation of the Carterville plant of Respondent, A. M. Andrews of Illinois, Inc. The depositions will show that, whereas the sales of lawn sprinklers by Respondent, A. M. Andrews Company of Oregon, in the calendar year 1953 were $1,209,637.59, the combined sales of both Respondent A. M. Andrews Company of Oregon and Respondent A. M. Andrews of Illinois, Inc., in the months of January to September, inclusive, 1954,

were $613,911.45. (Sales of A. M. Andrews Company of Oregon in said period were $585,542.14, and sales of A. M. Andrews of Illinois, Inc., in said period were $28,369.71).

The depositions would further show that the paid in capital of the Illinois Company was $5000.00, and that the operations of said Company prior to the shut down were possible only by reason of the fact that the Oregon Company guaranteed the payment of, and has either paid or is liable for the payment of, the purchase price for all plastic materials purchased by the Illinois Company for use in the manufacture of lawn sprinklers. The depositions will show that the liability incurred for plastic materials so purchased was $63,210.90. Further pertinent facts which should be in the record are that the Illinois Company incurred a loss of $27,460.28 during the period that its plant was operated, and that on June 1 it was apparent to the management of both the Oregon Company and the Illinois Company that further operation of the Carterville plant would result in further losses. The depositions would further show that the Oregon Company was not in a financial condition to provide further capital of the Illinois Company by way of guaranteeing payment of, or paying, the purchase price for plastic materials to be used in manufacture by the Illinois Company of lawn sprinklers for which there existed no market. Thus, the record would show that the net worth of the Oregon Company on December 31, 1953 was $76,696.78, and that the net worth of said Company on September 30, 1954, without

taking into account the loss to be absorbed by reason of liability for the debts of the Illinois Company in amount of approximately $60,000.00, was $89,589.93.

The depositions would show that, on June 1, 1954 when the Carterville plant was shut down, Respondent A. M. Andrews of Illinois, Inc., did not have a single unfilled order on hand to justify the continued operation of the plant, save and except for a small government order which was filled by two or three days of operation in June or July and by the employment of four or five production workers, and that market conditions were such that future volume of orders could not be anticipated which would permit the Carterville plant to avoid operating at a loss. The depositions would further show that the financial condition of the Oregon Company has deteriorated over the period since June 1, 1954, and, in fact, that the condition of said Company at the present time is such that, at the insistence of the manufacturer who has been supplying the plastic materials, the management of said Company has been placed in the hands of trustees.

If depositions are taken as herein requested, and the full facts recorded in these proceedings, it will abundantly appear that the Carterville plant of Respondent A. M. Andrews of Illinois, Inc., was closed on June 1, 1954 by reason of, and only by reason of, economic necessity, and that said plant has been permanently abandoned for the same reason.

It is apparent from a reading of the Official Report of Proceedings before the Trial Examiner that

the full and true facts, as to the reason for the shut down of the Carterville plant, were not presented at the hearing before the Trial Examiner because A. M. Andrews and John Tuttle, representatives of the Respondents, appeared at the hearing without benefit of legal counsel neither prior to or at the hearing and without an adequate understanding of the scope or purpose of the hearing. In fact, the efforts of Andrews and Tuttle to represent the Respondents was a travesty, and the only way in which this matter can be properly presented to the Board is by reopening the record for the purpose of taking further evidence. The request is made that such further evidence be taken by deposition in Portland, Oregon, before a duly authorized representative of the Board, in order to avoid the expense of attendance at another hearing in St. Louis, Missouri, or elsewhere. Neither of the Respondents is now financially able to bear the expense of legal counsel or witnesses at a hearing at St. Louis, Missouri, or elsewhere.

Respectfully submitted,

Respondent A. M. Andrews Company of Oregon, an Oregon Corporation

Respondent A. M. Andrews of Illinois, Inc., an Illinois Corporation

/s/ RALPH R. BAILEY,

Attorney for Respondents

Affidavit of Service by Mail attached.

United States of America

Before The National Labor Relations Board

Case No. 14-CA-1208

A. M. ANDREWS COMPANY OF OREGON and A. M. ANDREWS OF ILLINOIS, INC., and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL.

DECISION AND ORDER

On October 28, 1954, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that one of the Respondents, A. M. Andrews of Illinois, Inc., hereinafter referred to as Respondent Illinois, had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto; and finding further that the other Respondent, A. M. Andrews Company of Oregon, hereinafter referred to as Respondent Oregon, had not engaged in any unfair labor practices, and was not responsible for the unfair labor practices in which Respondent Illinois had engaged and was engaging. Thereafter the Respondents filed exceptions to the Intermediate Report and a brief in support of these exceptions.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no

prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondents' exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and additions:

1. In their exceptions and brief the Respondents request that the record be reopened to permit the introduction into evidence of additional data pertaining to the Respondents' financial condition. The data which the Respondents would introduce is set forth in detail in their exceptions. The Respondents assert that the introduction of such data would show that the Carterville plant was shut down and permanently abandoned solely because of economic necessity. The Respondents do not assert that the financial data they now seek to introduce into evidence was newly discovered. The only reason they assign for the failure to introduce it into evidence at the hearing is that "A. M. Andrews and John Tuttle, representatives of the Respondents, appeared at the hearing without benefit of legal counsel neither prior to or at the hearing and without an adequate understanding of the scope or purpose of the hearing."

After due notice, the hearing in this case was held on September 20, 1954. It had been originally scheduled for July 19 and had been rescheduled for August 16. As early as June 6, 1954, Respondent Illinois was notified that it had been charged with

the commission of the unfair labor practices here in issue. The complaint in this case was served on June 28, 1954; an answer to the complaint was received in the Regional Office on July 6, 1954. A second amended charge and an amended complaint was served on the Respondents on August 27, 1954. It does not appear, therefore, nor in fact do the Respondents assert, that the Respondents were not adequately apprised of the charges against them, or that they were deprived of the opportunity to prepare their defense. No request for an adjournment was made by the Respondents at the hearing for the reason that they were unrepresented by counsel, or for any other reason. The Respondents were granted ample opportunity at the hearing to present their defense. Indeed, during the course of the presentation of concluding arguments, after both the General Counsel and the Respondents had rested their cases, the Trial Examiner, over the General Counsel's objections, permitted the Respondents to introduce certain evidence pertaining to Respondents' financial condition which is set forth in the Intermediate Report. In these circumstances, especially in view of the fact that no assertion is made that the evidence the Respondents seek to introduce is newly discovered, we do not believe that the Respondents have shown adequate reason in support of their request to reopen the record, and the request is hereby denied.[1]

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[1] Basic Vegetable Products, Inc., 75 NLRB 815, 818; Vogue-Wright Studios, Inc., 76 NLRB 773, 778; The Sun Company of San Bernardino, California, 105 NLRB 515, 520.

We note, moreover, that even were we to permit the introduction into evidence of the financial data set forth in the Respondents' exceptions, we would not deem it of sufficient probative force to establish that the Carterville plant was shut down for economic reasons.[2] Like the Trial Examiner, we recognize that the Respondents were beset by financial difficulties. However, also like the Trial Examiner, and for the reasons indicated in the Intermediate Report, we are convinced that the plant's shutdown on June 1, 1954, was discriminatorily motivated, and was not the immediate result of the economic considerations the Respondents have advanced. The existence, therefore, of economic considerations which did not directly cause the plant's shut down, does not excuse the Respondents' discriminatory action.[3]

2. We find, in agreement with the Trial Examiner, that the Respondents form a multi-state en-

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[2] In rejecting, at this time, the Respondents' request to reopen the record, we do not now rule upon the materiality of the financial data set forth in the Respondents' exceptions upon either: (1) the issue as to the amount of work that would have been available to employees during the period June 1-August 3, 1954, but for the Respondents' discriminatory lockout of June 1; and (2) the corollary issue as to the amounts of back pay due the discriminatorily locked-out employees. These matters may properly be raised in the compliance stage of this proceeding.

[3] See N.L.R.B. vs. Norma Mining Corp., 206 F.2d 38, 44 (C.A. 4).

terprise whose combined out-of-state sales[4] are sufficient to meet the Board's recently announced jurisdictional standards.[5] However, we do not agree with the Trial Examiner's finding that the Respondents are separate employers, nor with the Trial Examiner's further finding that Respondent Oregon may not be held responsible for remedying the unfair labor practices here in question.

As set forth in the Intermediate Report, the President and principal stockholder of Respondent Oregon, with 345 shares, is A. M. Andrews. The other officers and stockholders of this corporation are: Alex Marshall, Vice-President, with 16 shares; Norman Brown, Secretary-Treasurer, with 1 share; and Ray H. Lesher, formerly Secretary, with 1 share. A. M. Andrews is also the President of Respondent Illinois, and owns 1 share, or 25 percent of its stock. John A. Tuttle, the nephew of A. M. Andrews, is its Vice-President, Norman Brown its Treasurer, and Ray H. Lesher, its Secretary. Each of the latter owns 1 share, or 25 percent of the stock of Respondent Illinois. Both Respondents manufacture plastic hose sprinklers. Respondent Oregon started operations in Oregon in 1951, while Re-

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[4] From June 30, 1953 to June 30, 1954, Respondent Oregon had $791,000 in out-of-state sales. During the period January 1, 1954 to June 30, 1954, its out-of-state sales were in excess of $210,000. Respondent Illinois, during the period April 27, 1954 to July 31, 1954, had $22,000 in out-of-state sales.

[5] Jonesboro Grain Drying Corporation, 110 NLRB No. 67.

spondent Illinois began actual manufacturing operations at Carterville, Illinois, on April 27, 1954.

Before Respondent Illinois commenced its operations, A. M. Andrews personally contacted a committee of Carterville business men. As a result of Andrews' negotiations with this committee, an agreement was reached whereby the town erected a building for the use of Respondent Illinois. To operate the plant at Carterville, John Tuttle, James Paterson and Milo Smith were transferred from the Portland plant of Respondent Oregon. Tuttle was named managing agent of the Carterville plant; Paterson and Smith set up the equipment and trained the personnel. Paterson subsequently assumed the duties of the plant's production foreman. Tuttle, the managing agent, reported directly to Andrews; and Andrews handled the labor relations problems for both Respondents. It was Andrews, moreover, who, after conferring with the other officers of the Oregon corporation, ordered the Carterville plant closed on June 1, 1954. Respondent Oregon furnished the credit for Respondent Illinois by guaranteeing the latter's purchases. Raw materials used by the Carterville plant was carried on the books of Respondent Oregon corporation as an account receivable. When the Carterville plant was dismantled on August 3, 1954, all its raw materials, finished products and machinery were shipped to, and taken over by, Respondent Oregon.

In determining that the Respondents are separate employers and that therefore Respondent

Oregon was not responsible for the unfair labor practices committed at the Carterville plant, the Trial Examiner did not advert to a number of factors of paramount significance. These are: (1) the fact that both Respondents are engaged in manufacturing and selling the same product, and have almost identical names; (2) the fact that A. M. Andrews is the virtual owner of Respondent Oregon, and together with his nephew owns 50 percent of the stock of Respondent Illinois; (3) the fact the officers in both corporations are virtually the same; (4) the fact that the Respondent Oregon lent its credit to Respondent Illinois in the acquisition by the latter of raw materials and machinery—thereby providing the very means whereby the Respondent Illinois could operate; (5) the fact that after the shutdown of the Carterville plant, the raw materials and physical assets of Respondent Illinois were turned over to Respondent Oregon, presumably to be disposed of as the latter might direct; (6) the fact that the labor relations of both corporations were controlled by the same person, the aforementioned A. M. Andrews; and (7) the fact that A. M. Andrews demonstrated his practical control over Respondent Illinois by himself making the vital decision to shut down operations at Carterville. The existence of these factors demonstrates the close integration of the Respondents. They show further, and we so find, that the Respondents constitute a single employer within the meaning of the

Act.[6] It follows therefrom, and we also find, that Respondent Illinois is an integral part of a multi-state organization, and that Respondent Oregon is responsible for remedying the unfair labor practices herein found to have been committed.[7]

The Remedy

As the Respondents have engaged in unfair labor practices, we shall order that they cease and desist therefrom. In order to effectuate the policies of the Act, we shall also order that the locked-out employees be made whole for losses of pay they suffered between June 1, 1954, the date of the shutdown of the Carterville plant, and August 3, 1954, the date of the plant's permanent closing; and that the Respondents offer reinstatement to the locked-

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[6] Don Juan Co., Inc., 79 NLRB 154, 155, enforced 178 F.2d 625, 627 (C.A. 2); N.L.R.B. vs. Federal Engineering Co., 153 F.2d 233 (C.A. 6); N.L.R.B. vs. Condenser Corp., 128 F.2d 67, 71 (C.A. 3); Somerset Classics, Inc., 90 NLRB 1676, enforced 193 F.2d 613 (C.A. 2); Milco Undergarment Co., Inc., 106 NLRB 767, enforced 212 F.2d 801 (C.A. 3); Wright & McGill Company, 102 NLRB 1035. Cf. N.L.R.B. vs. Stowe Spinning Co., 336 U.S. 226, 227.

[7] In view of our determination that the Respondents constitute a single employer within the meaning of the Act, we do not deem it necessary to consider the Trial Examiner's assumption that the Board may apply one standard in judging corporate-interrelationship for the purpose of asserting jurisdiction and a different one in judging corporate-interrelationship for the purpose of remedying unfair labor practices.

out employees in the event that the Respondents resume operation in Carterville, or in the event that the Carterville operations are resumed elsewhere.

Our dissenting colleague would also order Respondent Oregon to place the Carterville employees on a preferential hiring list at the Oregon plant. We believe, however, that in view of the circumstances of this case, such an extension of the remedy is not warranted. In the first place, the Carterville operation appears to have been a localized venture in a geographical area widely separated from that of the Oregon plant. Secondly, and even more significantly, the permanent closing of the Carterville plant was not discriminatorily induced, but was rather, as the Trial Examiner found and as our dissenting colleague apparently concedes, the result of economic considerations. Certainly, therefore, in the normal course of events, the Carterville employees would have had no expectation of employment with the Respondents after August 3, 1954.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondents, A. M. Andrews Company of Oregon, and A. M. Andrews of Illinois, Inc., their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International

Association of Machinists, AFL, or in any other labor organization of their employees, by shutting down plants and locking out their employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) Announcing that they will not tolerate a union in their plant, threatening to move their plant to discourage union activity, and conducting polls of their employees to procure their renunciation of support for International Association of Machinists, A.F.L., or any other labor organization; and

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Make whole the employees whose names are listed in Appendix A of the Intermediate Report in the manner prescribed in the section of the Intermediate Report entitled "The remedy;"

(b) In the event of the resumption of their operations at Carterville, Illinois, or in the event that the Carterville operations are resumed elsewhere, offer to the employees whose names are listed in Appendix A of the Intermediate Report immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and in the event such operations are resumed at a location which is not in the immediate vicinity of Carterville, offer to pay the employees any necessary and reasonable expense of moving themselves, their families, and their household effects to the vicinity of the plant where operations are resumed and in which said employees are offered reinstatement;

(c) In the event operations are resumed at Carterville, or elsewhere, post in their plant copies of the notice attached hereto and marked Appendix B.[5] Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being signed by Respondents' representative, be posted by Respondents immediately after resumption of operations and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said

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[5] If this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "A Decision and Order" the words "A Decree of the United States Court of Appeals Enforcing an Order."

notices are not altered, defaced, or covered by any other material; and

(d) Notify the Regional Director for the Fourteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondents have taken to comply herewith.

Dated, Washington, D. C., May 10, 1955.

[Seal] GUY FARMER, Chairman
IVAR H. PETERSON, Member
PHILIP RAY RODGERS, Member
National Labor Relations Board

Abe Murdock, Member, concurring in part and dissenting in part:

I am in full agreement with the main opinion except for the order which I believe is inadequate fully to remedy the unfair labor practice found.

Paragraph 2(b) of the Order is not broad enough to provide an effective remedy for discriminatory lockout of the Carterville employees which the Board finds took place when the Carterville plant was shut down. The Respondents are merely told in the cease and desist portion of the Order not to do this any more; and in the affirmative portion of the Order to reinstate the locked out employees only if the Carterville plant is reopened or those operations are resumed elsewhere. If these operations are permanently abandoned, there has been no effective remedy. Inasmuch as the Board has found above (1) that Respondents Oregon and Illinois are a single employer, and (2) that Respondent Oregon

"is responsible for remedying the unfair labor practices found to have been committed," I believe it only logical that Respondent Oregon be required to place the Carterville employees on a preferential list for employment at the Oregon plant in preference to any new hires at the plant. Accordingly, I would broaden the Order to that extent and disagree with the present narrow form.

Dated, Washington, D. C., May 10, 1955.

ABE MURDOCK, Member
National Labor Relations Board

[Printer's Note: Appendix B is similar to Appendix B set out at pages 27-29 of this printed record.]

Affidavit of Service by Mail and Return P. O. Receipts attached.

In the United States Court of Appeals
for the Ninth Circuit

No. 14866

A. M. ANDREWS COMPANY OF OREGON and A. M. ANDREWS OF ILLINOIS, INC.,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled "A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., and International Association of Machinists, AFL," the same being known as Case No. 14-CA-1208 before said Board, such transcript includes the pleading and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony taken

before Trial Examiner George A. Downing on September 20, 1954, together with all exhibits introduced in evidence.

(2) Copy of Trial Examiner Downing's Intermediate Report and Recommended Order dated October 28, 1954; order transferring case to the Board, dated October 28, 1954, together with affidavit of service and United States Post Office return receipts thereof.

(3) Petitioners'[1] exceptions to the Intermediate Report and Recommended Order including request that the record be reopened, received December 6, 1954. (Petitioner's request to reopen the record denied, See Decision and Order, page 2.)

(4) Copy of Decision and Order issued by the National Labor Relations Board on May 10, 1955, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 5th day of October, 1955.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National Labor Relations Board

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[1] Respondent before the board.

[Title of U. S. Court of Appeals and Cause.]

SUPPLEMENTAL CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—series 6, as amended, hereby certifies that the document annexed hereto, namely, Petitioners'[1] request for extension of time to file exceptions to Intermediate Report and Recommended Order of Trial Examiner, and brief in support of said exceptions, is a part of the record in the above-entitled matter previously mailed to this Court on October 5, 1955.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of October, 1955.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National Labor Relations Board

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[1] Respondents before the Board.

Before the National Labor Relations Board
Fourteenth Region

Case No. 14-CA-1208

In the Matter of A. M. ANDREWS OF ILLINOIS, INC., and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL.

TRANSCRIPT OF PROCEEDINGS

Hearing Room, U. S. Court House and Custom House, St. Louis, Missouri, Monday, September 20, 1954.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before George A. Downing, Esq., Trial Examiner.

Appearances: John A. Tuttle, 4621 Beaverton Hillsdale Highway, Portland 19, Oregon, appearing on behalf of the Respondent, A. M. Andrews of Illinois, Inc. A. M. Andrews, 4621 Beaverton Hillsdale Highway, Portland 19, Oregon, appearing on behalf of the Respondent, A. M. Andrews of Illinois, Inc. William F. Trent, Esq., 1114 Market Street, St. Louis, Mo., appearing as Counsel for General Counsel, National Labor Relations Board.

* * * * *[1*]

Exam. Downing: In other words, you are reasonably satisfied with the figures you have in the stipulation.

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Mr. Trent, would you be satisfied with the word approximately instead of "more or less"?

Mr. Trent: Yes, sir.

Exam. Downing: Would you be satisfied with that Mr. Andrews?

Mr. Andrews: Yes, sir.

Exam. Downing: Then may it be understood, may it be stipulated that the stipulation be amended to use the words "approximately" wherever the words "more or less" appears in it.

Mr. Andrews: That's agreeable with me.

Mr. Trent: I am agreeable with that.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Exam. Downing: May I see the stipulation.

Mr. Trent: General Counsel's exhibit, marked for identification as Exhibit No. 2, is the stipulation in regard to the commercial facts at the Company's Oregon establishment.

Exam. Downing: Very well, the stipulation will be received with the amendment which has just been made and stipulated to.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.) [25]

[See page 96.]

Exam. Downing: Off the record.

(Discussion off the record.)

Exam. Downing: On the record.

Proceed, Mr. Trent.

Mr. Trent: Would you mark this exhibit 2-B,

and mark the other one, then, 2-A, so that the record will be clear, 2-A are the commercial facts in regard to the company's Oregon establishment and 2-B are the commercial facts in regard to the company's Illinois establishment.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2-B for identification and the document originally marked as Exhibit 2 was marked 2-A.)

[See page 96.]

Mr. Trent: I would like to offer Exhibits 2-A which are the commercial facts on the companies original establishment and 2-B which is the commercial facts on the company's Illinois establishment.

Exam. Downing: That is with the amendment?

Mr. Trent: Yes.

Exam. Downing: I have already received 2-A, does 2-B also carry the terms "more or less"?

Mr. Trent: Yes, sir.

Mr. Downing: To which you object and you will be satisfied with the word "approximately"?

Mr. Trent: I will.

Exam. Downing: Are you agreeable to the amended stipulation, [26] Mr. Andrews?

Mr. Andrews: Yes, sir.

Exam. Downing: Exhibit No. 2-B will be received in evidence with the agreement that the words "more or less" will be changed to "approximately", wherever they appear in the stipulation.

[See page 99.]

* * * * * [27]

A. M. ANDREWS

a witness called by and on behalf of the General Counsel, being [101] first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Trent): State your name please.

A. A. M. Andrews.

Q. What is your address?

A. Business or residence?

Q. Your residence.

A. 8410 Southwest Milon Lane, Portland, Oregon.

Q. What is your title at the Oregon Corporation, what title are you employed there, in what capacity are you employed? A. General manager.

Q. Aren't you President of that corporation?

A. I am President of the A. M. Andrews Company, Illinois.

Q. Are you President of the A. M. Andrews Company, of Oregon, also? A. Yes, sir.

Q. How many shares of stock do you own in that company, Mr. Andrews?

A. Oh, I don't know, about, just guessing about 80 percent.

Exam. Downing: Isn't that speculative?

Mr. Trent: All right, sir, it isn't a percentage but——

Q. (By Mr. Trent): What is your title at the Illinois Corporation? A. President.

Q. President of the Illinois Corporation. Now, Mr. Andrews, [102] what is manufactured at your

(Testimony of A. M. Andrews.)

establishment in Oregon, what is manufactured there? A. Plastic Hose Sprinklers.

Q. Was the same thing manufactured at the Carterville establishment? A. Yes, sir.

Q. Who is your managing agent, who was at the time of the shut-down at the plant at Carterville, Illinois? A. John Tuttle.

Q. To whom did Mr. Tuttle report?

A. To the Board of Directors.

Q. Who does he report directly to, does he report directly to you as President? A. Yes.

Q. Who handles the labor relations problems, if any, at your Oregon establishment?

A. We don't have any.

Q. If you had any, who would handle them, Mr. Andrews, if you had any?

A. Well, I don't know about something that we never had. We never had to hire anyone for that reason.

Q. You do consider yourself as the man who would handle any labor relation problems at both establishments, do you not?

A. Well, naturally, to go along with the policy I have followed.

Exam. Downing: Is Mr. Tuttle still with your company? [103]

The Witness: He is with the Portland Company, he came back to Portland, he is with us in Portland.

Q. (By Mr. Trent): Who was the man who gave

(Testimony of A. M. Andrews.)

the final orders as to the closing the Carterville, Illinois, establishment?

A. It was possibly three.

Q. I mean who were those three?

A. Well, we talked it over and Norm Brown, he is the Treasurer and Office Manager and Jake Longcor.

Q. Who would have the final say so, would you have had the final say so?

A. I don't take the bull by the horn and do as I please, it's policy, has to be set, I listen to other people and we talk it over.

Q. You and Mr. Brown talked it over?

A. Yes, and Mr. Longcor.

Q. And then as a result of that you gave Mr. Tuttle orders to shut it down, is that correct?

A. Yes, for the time being, that is it was a temporary shut-down.

Exam. Downing: Temporary shut-down?

The Witness: That was our viewpoint at the time, you will find that there has been conditions that has happened, and that changed the picture.

Q. (By Mr. Trent): When was the plant in Oregon first established, Mr. Andrews, approximately? [104] A. The Oregon plant?

Q. Yes, sir, the parent plant, when was it started? A. The corporation?

Q. Your hose manufacturing plant in Oregon, do you recall what year, I don't care about the exact moment.

(Testimony of A. M. Andrews.)

A. Well, I made the first sprinkler in '51, but I didn't start production until '52, that is, for resale.

Q. That is in Oregon? A. In Oregon, yes.

Q. When was your subsidiary plant in Carterville started, do you recall when that was started?

A. We negotiated there a year ago last Fall, that is for the building, we negotiated for it.

Q. Do you remember what month the production actually started in your subsidiary plant in Carterville?

Mr. Andrews: Have you got the date John?

Mr. Tuttle: 27th of April, 1954.

A. That was production.

Mr. Tuttle: That was when we started training personnel.

Mr. Trent: When did production take place?

Mr. Tuttle: When you are training people, you are building sprinklers, aren't you?

Mr. Andrews: But I sent two men from Portland here, that were acquainted with the operations of machines and understood the assembly and operation of them. I sent them there to train [105] and get the equipment set up because no one knew it here.

Q. (By Mr. Trent): By here, Mr. Andrews, you refer to Carterville, Illinois? A. Yes.

Q. Who were those two people?

A. Milo Smith and Jimmie Paterson.

Q. He was the production foreman, you might say?

A. He was, he had no official capacity.

(Testimony of A. M. Andrews.)

Exam. Downing: Where did you get Mr. Tuttle from?

The Witness: Portland.

Exam. Downing: He came here from Portland also?

Q. (By Mr. Trent): Mr. Tuttle is your nephew is he not? A. Yes.

Exam. Downing: Which company is Mr. Tuttle connected with, the Oregon Company?

The Witness: Oregon.

Q. (By Mr. Trent): Who did you negotiate with, Mr. Andrews, in order to put the plant in Carterville? You mentioned negotiating, do you recall with whom you negotiated with?

A. Well, the first, first it was Godfrey Hughes in Southern Illinois, Inc., he was interested in getting industry there, he wouldn't influence it for one location over another, he had to be wholly impartial and unbiased to all towns. It was up to us to decide what location we would take and this community made us an offer, they were very anxious for us to come in there [106] and they—the unemployment situation was pretty bad, they said there was around 250,000 people within a 25 mile radius of Carterville, although there was stated only 3,000 people in Carterville, but they assured us of a plentiful supply of labor.

Exam. Downing: Who was on the committee for the town?

The Witness: There was Lee Hooker, Mack Steffes, Mr. Hayton, and Paul Dorcy.

(Testimony of A. M. Andrews.)

Exam. Downing: Did the town own the building?

The Witness: No, they erected the building, I told them as the tax situation is today a new business is hard to gain capital for operations and as far as being able to build a building it was impossible for us to build one.

Exam. Downing: Who did build it?

The Witness: This industrial group in Carterville. They held some dinners and they donated the money and Mr. Steffes furnished all the material at cost and they put the building up and then we signed a purchase agreement on the building that it would revert to us after a period of time.

Exam. Downing: Was that industrial group represented by the same committee, Hayton, Hooker, Steffes, and so forth?

The Witness: That's right.

Q. (By Mr. Trent): Mr. Andrews, did you personally contact for the negotiations with these men or was it done by letter and telephone? [107]

A. I came down personally and signed the first agreement and the lease agreement was signed later, after the building was put up.

Q. You personally signed a consent election agreement, did you not? A. Yes.

Q. I believe it was June the 8th, is that correct, you were down again and signed that personally?

A. As far as I remember, yes.

May I retract a statement. There was a statement made, at least it left the impression that I said the building was for rent as of the date that we shut

(Testimony of A. M. Andrews.)

down. I have never said anything of that nature, because we anticipated continuing on through but as you probably learned, later that has changed.

Q. Correct me if I was wrong. That statement was reputed to have been made by Mr. Godfrey Hughes.

A. That is right but I have no control over what he said.

Q. I don't think that any witness said you made that statement but several witnesses said that Godfrey Hughes said that. A. Yes.

Exam. Downing: The record will show that.

Mr. Trent: I think the record will show it.

The Witness: Yes.

Q. Thank you.

Mr. Trent: That is all. [108]

Exam. Downing: What date was it that you closed down the plant at Carterville?

Mr. Tuttle: Which time, sir?

Exam. Downing: Finally.

I will have to ask Mr. Andrews that, he is on the stand, do you know?

The Witness: I couldn't give you the date, I think you are referring to the time when we made the decision to move the equipment out.

Exam. Downing: Well, there has been testimony about a shut-down on June 1st, testimony also shows that sometimes after that the plant may have operated on a limited basis. When did you finally close down, do you know?

(Testimony of A. M. Andrews.)

The Witness: I don't believe there was any production after June 1st, was there?

Mr. Tuttle: Was production to the point——

Mr. Trent: I am going to object to that.

Exam. Downing: At the present time he is making a statement as the company's representative. It's not testimony than any other statement he is making.

Mr. Tuttle: Because we were low on some sizes of sprinklers, but the actual date of that I don't know, we just worked a few days to make a few sizes of the sprinklers.

Exam. Downing: When did the plant finally close, Mr. Andrews? [109]

The Witness: Can't give you that.

Mr. Tuttle: Third of August.

The Witness: Third of August.

Exam. Downing: Between June first and the third of August, had you done anything about disposing of your assets?

The Witness: No, sir, we did not.

Exam. Downing: After the third of August did you do anything about disposing of your assets at that plant?

The Witness: We moved all equipment and the inventory to Portland.

Exam. Downing: To Portland?

The Witness: Yes.

Exam. Downing: The Oregon company took it over?

The Witness: That's right, even the inventory

(Testimony of A. M. Andrews.)

of finished sprinklers, you see, when we closed the plant down we had over——

Mr. Tuttle: Twelve hundred and fifty dozen.

The Witness: (Continuing) ——twelve hundred and fifty dozen sprinklers here.

Exam. Downing: On hand?

The Witness: That's right and our inventory was getting so large that—and the season has been off——

Exam. Downing: Anyway, you took all those assets and put them in the Oregon company?

The Witness: Yes.

Exam. Downing: What sort of bookkeeping arrangement did [110] you make to show the transfer from one company to the other?

The Witness: We carried the inventory of raw materials for Carterville, the majority of items such as plastic we carried that and we had to guarantee the payment on that through our Portland corporation, to the suppliers, they wouldn't give the Carterville, Illinois, plant the credit.

Exam. Downing: So the Portland, your Oregon company has been furnishing your credit for the Illinois corporation?

The Witness: That is right.

Exam. Downing: Did you finally liquidate the Illinois company or is it still unliquidated?

The Witness: The corporation is not liquidated.

Exam. Downing: But the Portland company has all of the assets?

The Witness: Yes, sir.

(Testimony of A. M. Andrews.)

Exam. Downing: What sort of bookkeeping entries have you made to show the transfer from one company to the other company?

The Witness: The Illinois Corporation is completely separate in bookkeeping.

Exam. Downing: I understand that, but I am trying to find out how, on the books of the two companies, did you transfer the assets from one to the other?

The Witness: The plastic was the biggest item, that was carried on the books as an accounts receivable by the Portland Company, and then when we liquidated we brought that back to [111] clear up those accounts.

Exam. Downing: Anyway, the Oregon company took over the accounts receivable of the Illinois company?

The Witness: That is still held separate, isn't it?

Mr. Tuttle: I believe it is still held separate.

Exam. Downing: Who is the ones that are doing the checking?

The Witness: We are in Portland, through the Carterville corporation, until the accounts receivable are cleaned up.

Exam. Downing: Did the Illinois company leave any accounts payable?

The Witness: No, nothing that amounted to anything.

Exam. Downing: How have they been handled?

The Witness: Through the advance of the money from the Portland Corporation.

(Testimony of A. M. Andrews.)

Exam. Downing: Do the two companies have a single auditor or bookkeeper?

The Witness: Single auditor, same auditor, Ray Lecher handles the auditing for both companies.

Exam. Downing: Is there a single bookkeeper?

The Witness: The bookkeeping in Carterville was all done in Carterville and the auditing would be done in Portland.

Exam. Downing: What about now? Is the bookkeeping done by the same person?

The Witness: It's being consolidated by the same person in Portland. [112]

Exam. Downing: Was the machinery all shipped back to Oregon?

The Witness: Yes, sir.

Exam. Downing: That is being held by the Oregon Company?

The Witness: That is right.

Exam. Downing: Is it using the machinery?

The Witness: No, it's in storage.

Exam. Downing: In the name of the Oregon company?

The Witness: Yes. That machinery was never paid for, by the way.

Exam. Downing: The Oregon company was liable for it?

The Witness: Yes.

Exam. Downing: So, in effect, the Oregon company is holding the machinery for the security of the guarantee?

The Witness: Yes.

(Testimony of A. M. Andrews.)

Exam. Downing: Anything further?

Mr. Trent: I believe that is all at this time.

Exam. Downing: Anything further?

That is all.

(Witness excused.) [113]

* * * * *

Exam. Downing: Hearing will be in order. Are you ready Mr. Andrews?

Mr. Andrews: I would like to read this into the record, it is dates and figures here. This shut down——

Exam. Downing: Just a moment. Do you intend that to come in as evidence. It can come in as evidence and we will reopen the record.

Mr. Andrews: I think it is good as argument as far as I am concerned. We started training plant personnel in April of 1954 and at the time we started we only had four or five people and gradually built this up to 35 women and five men. During [125] this period of training we built up an inventory of 850 dozen sprinklers and the home office in Portland was advised of this inventory and they suggested that we shut down the plant until the stock started to move to market, as we sell a very seasonable product. We shut down the plant on May 11, and did not reopen until May 26th. Now, in reference to this shutting down, Mr. Tuttle had placed the same kind of notice on the bulletin board the second time as he had on the earlier shut down.

Exam. Downing: I don't think that has been established by the evidence, has it?

Mr. Andrews: No, sir.

Mr. Andrews: And then the June 1st shutdown was the same thing, it fell on a Tuesday, and the reason they were paid up in full at that time was because it was the end of their week and we didn't know how soon they would be coming back and we would be going into production.

Exam. Downing: When is the end of your work week pay period?

Mr. Andrews: Tuesday.

Mr. Tuttle: Monday or Tuesday, I know there was the holiday there and we didn't pay on Monday.

Exam. Downing: Is Tuesday the regular pay day?

Mr. Tuttle: I think it was, yes.

Mr. Trent: I want to make it clear for the record that I am objecting to any of this going in as evidence. [126]

Exam. Downing: It can't go in as evidence unless you want to reopen the record and take the stand and testify to it.

Mr. Andrews: Maybe we better put it into the record.

Exam. Downing: Maybe you better move to reopen the record.

Mr. Andrews: I move that we reopen the record.

Exam. Downing: I will grant the motion to reopen the record.

Mr. Trent: I object to the reopening of the record for the witness after the testimony was in for both

cases. Both parties have stated that they have rested their case and that the General Counsel has argued his case and after the argument of General Counsel, we strenuously object.

Exam. Downing: I realize, of course, that it is most unusual, however, the Respondents here are not represented by counsel. You are not a lawyer?

Mr. Andrews: No, sir.

Exam. Downing: Under those circumstances I will grant that indulgence despite the strenuous objection of the General Counsel.

Mr. Trent: My answer to that is that even though he isn't a lawyer there are plenty of good lawyers available and are not too busy and I don't think that the fact that he doesn't have a lawyer is irrelevant.

Exam. Downing: My ruling is that if you wish to take the stand and testify you may, do you want to Mr. Andrews?

Mr. Andrews: I do, sir. [127]

Exam. Downing: All right sir, you will be on the same oath as you were a little while ago, subject to cross-examination.

A. M. ANDREWS

having been previously sworn, resumed the stand and testified as follows:

Direct Examination

Exam. Downing: Suppose you state your name for the record.

The Witness: In—A. M. Andrews.

(Testimony of A. M. Andrews.)

In regard to the shutdown I wish to state that as our product was very seasonable and we had built up an inventory of 850 dozen sprinklers on May 11, 1954, on that date we stopped production and laid off the employees until we reopened on May the 26th, 1954.

Exam. Downing: Was any notice given on May 11?

The Witness: On May 11, the same was given.

Exam. Downing: Did you post a notice?

Mr. Andrews: There was a notice posted on the bulletin board.

Exam. Downing: Was it in writing?

The Witness: It was in writing.

Exam. Downing: Do you have a copy of it?

Mr. Andrews: We don't have a copy of it.

Exam. Downing: You weren't present were you?

Mr. Andrews: No, Mr. Tuttle was.

Exam. Downing: I don't see how you can testify then what [128] was in the notice then. Go ahead.

Mr. Trent: Understand that I am objecting to this whole thing.

Exam. Downing: I understand that the record shows that clearly.

Mr. Andrews: We reopened again in May 26, 1954.

Exam. Downing: May 26th would be on a Wednesday wouldn't it?

Mr. Trent: That is correct.

Exam. Downing: You opened then on the 26th,

(Testimony of A. M. Andrews.)

the 27th and on the 28th, three days did you not?

Mr. Andrews: Yes, sir.

On Friday, May 28th, we had built up our inventory to 1250 dozen sprinklers. As Monday was a holiday, Memorial Day, I decided to give the workers a paid holiday and one day's work on Tuesday and then close once again until the inventory was cut down, however, on Tuesday I received a letter from Mr. Hubert Rushing advising me that the International Machinists were the bargaining agents for the people in the plant. At this time I went ahead and closed the plant as planned and advised, we were advised to do that from Portland due to the inventory. An election was held by the workers of A. M. Andrews——

Exam. Downing: That is duplicative. You are qualified to testify only to testify to what you know of your own knowledge. Did you get Mr. Rushing's letter in Portland? [129]

Mr. Andrews: We got a copy in Portland.

Mr. Tuttle: I have the original.

Exam. Downing: You got a copy on June 1st?

Mr. Andrews: Yes, sir. I think it was after that——

Mr. Tuttle: I got the original on June 1st.

Mr. Andrews: Also, of this 1250 dozen sprinklers that we had in inventory in Carterville, there were 600 and some odd dozen that we shipped back to Portland that were never moved out of the Carterville plant for the reason that there was a lack of orders and we have the financial statement showing

(Testimony of A. M. Andrews.)

the condition of the Carterville plant and the Portland plant, if that is of any interest.

Exam. Downing: It's up to you, you are putting up your case, I don't know whether it will be interesting or not.

Mr. Andrews: We gave you the figures in this, what do you call it, stipulation.

Exam. Downing: You are speaking to Mr. Trent now, let the record show that.

Anything further?

Mr. Andrews: Let me see, just a minute.

That is all.

Exam. Downing: Any cross examination?

Mr. Trent: Just a few questions.

Cross Examination

Q. (By Mr. Trent): You stated that you had 850 sprinklers on May 11th—— [130]

A. That is correct.

Q. (Continuing): In your inventory, so you stopped? A. That is correct.

Q. You gave a notice to the employees at that time, did that not state the reasons why you were closing down at that time?

A. No, all I know is what he told me and I saw the notice in Carterville.

Exam. Downing: Where is the notice now?

Mr. Andrews: It was on the bulletin board.

Exam. Downing: Where is it now?

Mr. Andrews: I suppose it is all torn off the bulletin board.

(Testimony of A. M. Andrews.)

Q. (By Mr. Trent): Now, how much inventory did you have on May 26, you had 850 on May 11.

A. One thousand two hundred and fifty dozen.

Mr. Tuttle: Wait a minute, no.

Exam. Downing: Just a minute, Mr. Andrews is testifying, let's keep this straight if possible.

Mr. Tuttle: That is what I was trying to do, sir.

Exam. Downing: I know but Mr. Andrews will have to testify.

Q. (By Mr. Trent): Did you have a high inventory on May 26th?

A. On May 26th, I don't know what, when he shut down it was 850 dozen that day and then on May 28, we had built the inventory up to 1250 dozen.

Q. That isn't responsive to my question. [131]

Did you have a high inventory on Wednesday, May 26, 1954, that is what I am asking you?

A. Yes.

Q. You did. Then, why did you decide that day to start back into operations if you had a high inventory?

A. Did not reopen until May 26th.

Q. Yes, sir, you did open on May 26th, you said you had a high inventory on that day. Why did you decide to reopen on that day?

A. We shut down on May 11.

Q. But you still had a high inventory on May 26th, why did you start on that particular day to reopen the plant?

(Testimony of A. M. Andrews.)

A. I don't know what the inventory was, it was——

Q. Certainly you must have known when you started back, started the plant, why did you start?

A. We were out of some sizes.

Q. So then the inventory was low on Wednesday, May 26th, is that right? A. Yes.

Q. Then are you telling me that by three days, Wednesday the 26th, Thursday the 27th and Friday the 28th that it had gone from a low to so high that you had to close the plant again, is that your testimony? A. That is my testimony, sure.

Q. What was it on May 26th? [132]

A. I don't have the figures.

Q. What was it on May 27th?

A. I don't have the figures.

Q. What was it on May 28th?

A. 1250 dozen.

Q. That is what it was on June 1st, isn't it?

A. Well, that is practically the same.

Q. 1250 dozen? A. Yes, sir.

Exam. Downing: Didn't make any on June first, didn't produce any?

Q. (By Mr. Trent): Didn't they produce anything on June 1st?

A. If they was working they did, yes.

Q. Then it was more than that wasn't it, Mr. Andrews, is this your testimony that you don't know what your inventory was on May 26th, on Thursday, May 27th, you don't know what it was on Fri-

(Testimony of A. M. Andrews.)

day, May 28th, but you know what it was on June first, 1250 dozen?

A. I know that is what it was when we shut down, yes, sir.

Q. That was after you received the notice from the union, was it not? A. Yes, it was.

Q. Mr. Andrews, do you recall——

A. I hadn't received a written notice by that time.

Q. You received notice from Mr. Tuttle? [133]

A. Yes, because he received it.

Exam. Downing: When he received that original from the union he called you right away didn't he, on June 1st?

Q. (By Mr. Trent): Mr. Andrews, do you recall a telephone conversation that you had with Mr. Godfrey Hughes when he was speaking from the Carterville, Illinois, or rather when he was speaking from Carterville, Illinois, and you were speaking from Portland, Oregon, on June 1st, 1954, do you recall that conversation?

A. I remember having a phone conversation with him, yes.

Q. Do you remember what occurred at that conversation, what did Mr. Hughes say to you, strike that.

Exam. Downing: Let's have one question at a time.

Q. (By Mr. Trent): Where did he call you from?

A. Carterville.

Q. From where was he talking?

A. I don't know.

(Testimony of A. M. Andrews.)

Q. How do you know it was from Carterville?

A. That is where the call came from.

Q. Very well, what was said, what did he say to you at that time, Mr. Andrews, what was the purpose of that call?

Exam. Downing: What did he tell you was the purpose of the call?

Mr. Andrews: The fact is it was so long ago I couldn't give you exactly anything much in regard to the phone conversation. [134]

Q. (By Mr. Trent): I will see if I can refresh your recollection just a little bit, Mr. Andrews. I have a statement here, was this your signature appearing on this statement (indicating), on page 2?

A. Yes.

Q. This is a two-page statement here, this is the first page and here is the second. Now, I will read this——

Exam. Downing: Just a minute, has he identified it?

Mr. Trent: I said it was his signature.

Mr. Andrews: Looks like mine, yes.

Q. (By Mr. Trent): I will read you this sentence and see if you can recall that.

Exam. Downing: Let him read that, I prefer not to have this into the record until he has properly identified it.

Mr. Trent: Would you read this, starting here?

Mr. Andrews: "I recall was the conversation"——

(Testimony of A. M. Andrews.)

Exam. Downing: Just read it to yourself, please, Mr. Trent will then question you about it.

Mr. Andrews: Yes.

Q. (By Mr. Trent): Now, this statement, do you recall the statement you made to myself when I was down there: "I have sworn to before me this 8th day of June '54" and on the first page, page 1, the yellow handwritten statement, you stated I recall a conversation on June 1st, 1954, between a Mr. Godfrey [135] Hughes and myself, did you make that statement? A. Yes.

Q. That is true then? A. Yes.

Q. The conversation was long distance "as I was in Portland, Oregon", is that correct?

A. Yes.

Q. "Mr. Hughes called me and tried to persuade me to keep the plant running for two or three days more, as a labor union here was trying to organize the plant and he felt that if the employees carried on he could straighten out some union trouble here" did you make that statement?

A. I didn't make it to you, you wrote out what you wanted and I signed it.

Q. You signed the statement?

A. You just wrote out the statement.

Q. Did you make this, did you sign this statement too, "He requested authorization for me to tell John Tuttle not to shut down but I would not let a labor union dictate my financial plans and I told him I would not give him such authority and we were going to close down"?

(Testimony of A. M. Andrews.)

A. That is true, the inventory was so large so why should I satisfy someone that is not connected with the corporation, why should I operate the plant to satisfy someone else?

Q. "I then called Mr. Tuttle to shut down the plant", is that [136] correct? A. Yes.

Q. Is this statement true "I have read the above statement consisting of two handwritten pages and swear that it is true and correct to the best of my knowledge", I believe that was on there when you signed it? A. I don't know.

Q. You read it over when you signed it?

A. I certainly did.

Q. Very well, or you wouldn't have signed it?

A. Sure.

Q. Now, then, you don't deny that, saying that Mr. Hughes, to paraphrase this, tried to persuade you to keep the plant open for two or three more days and he felt that he could straighten out some of the union trouble and he requested from you to tell John Tuttle not to shut down, is that correct?

A. Yes.

Q. And in reply you stated that you would not let a labor union dictate your plans to you and that you would not give him such authority to tell John Tuttle not to shut down, is that correct?

A. That is true enough, you can't have any labor union or—you can't go out and tell somebody to start their business or how much inventory they should carry——

Exam. Downing: Anything further? [137]

Mr. Trent: Just a moment. I believe that is all.

(Witness excused.)

Exam. Downing: Do you have any further evidence Mr. Andrews?

Mr. Andrews: We have a financial evidence here that is of the Carterville plant.

Mr. Trent: I want to object to that on the same grounds as I have previously stated.

Mr. Andrews: I am trying to establish——

Exam. Downing: Just a moment. Let me inquire, do I understand that you have furnished a copy of that to General Counsel, which served as a stipulation for evidence?

Mr. Andrews: Yes, sir, except Carterville figures here, this shows how much money we sunk into Carterville up to the 31st of May, $71,859.78.

Mr. Trent: We have no stipulation on that, sir.

Exam. Downing: Have you had a copy of that statement?

Mr. Trent: No, sir, I don't have.

Exam. Downing: Why don't we take a few minutes off the record here while you examine what he has got and see if you have any objections to that?

Off the record.

(Short recess.)

Exam. Downing: You may proceed.

Mr. Trent: We have conferred with this offer, firstly, it [138] is not the best evidence, it is not an authentic report from the records, it has not been audited, secondly, it is being submitted now after the close——

Exam. Downing: You needn't make that point again, let's get down to the exhibit itself.

Mr. Trent: That is my objection.

Exam. Downing: I wouldn't be able to receive that, I doubt the materiality of it. It may be the company could lose a great deal of money in Carterville but that wouldn't have anything to do with unfair labor practices.

Mr. Andrews: That is what I am trying to prove, there was no unfair labor practice, they shut down because they had an inventory of 850 dozen then, when they started up they built that up to 1250 dozen.

Exam. Downing: It's pretty hard to see how starting up on May 26 you would shut down a plant abruptly on June 1st without notice, since it was on the heels of the union's request for bargaining rights.

Mr. Andrews: May I ask him, John, how much equipment were we producing a day?

Exam. Downing: We are having trouble keeping our evidence straight from the arguments, if you want to put in any more evidence, you better put on your witness, on the stand, if so, swear him and put him on the stand as a witness. [139]

JOHN TUTTLE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Andrews): After shutting down the

(Testimony of John Tuttle.)

plant on May 11, then reopening on May 26th, what was the inventory, approximately on May 26th, when you started on May 26th, when you started production again?

A. We had completed approximately half of 850 dozen or had 400 dozen on hand, rather.

Q. What was the production per day after May 26th? A. 2500 to 3000 sprinklers a day.

Q. And on June the first, that inventory had been built up to *1205* dozen?

A. That is correct.

Q. Now, of that 1250 dozen, how much of that inventory was shipped to Portland with the equipment, machines that were shipped back there on August 3rd?

A. There were approximately 800, between 800 and 900 dozen of which there are approximately 6,500 sprinklers that haven't been sold as yet.

Mr. Andrews: That is all.

Cross Examination

Q. (By Mr. Trent): Mr. Tuttle, you stated that on May 26th there was 400 dozen on hand and May 27, you produced about 3,000 more dozen, is that right, sir? [140] A. In one day sir?

Q. What do you produce in one day, on May 27th?

A. I would give you the exact figures for May 27th, however we produced between 2500 and 3000 sprinklers a day, according to the day, how it would run.

(Testimony of John Tuttle.)

Exam. Downing: In other words, would be between 200 and 250 dozen per day. How many did you have when you shut down on May 11th?

The Witness: May 11th we had around 850 dozen, we depleted that to around 400 dozen by the 26th when we started up again, we run four days, we run Wednesday, Thursday, Friday——

Exam. Downing: You ran three days, according to you before you decided to shut down?

The Witness: We had run Wednesday, Thursday, Friday and the next Tuesday.

Exam. Downing: By that time according to you you had already decided to shut down?

The Witness: That is right. In fact, the inventory was getting large enough that Friday, was above the original inventory.

Exam. Downing: When did you actually start operating, actually start production, in April?

The Witness: I believe it was the 27th.

Exam. Downing: The 27th, and did you operate regularly from the 27th through May 11? [141]

The Witness: We started with only four or five people on the 27th——

Exam. Downing: And you operated regularly until May 11th?

The Witness: That is correct.

Exam. Downing: What happened to that notice you posted on May 11th?

The Witness: I imagine it went into the waste paper basket or any place, what you going to do save that?

(Testimony of John Tuttle.)

Exam. Downing: What happened to the one you posted on June 1st?

The Witness: Probably still on the bulletin board.

Q. (By Mr. Trent): Did that notice state any reason for the layoff at that time, on May 11th?

A. Until further notification, I believe.

Q. Did the notice on June 1st state until further notification?

A. I believe it did, I am not sure but I believe it did.

Q. You wouldn't swear to it, would you?

A. No, sir.

Q. Getting back to the May 11th notice——

A. I think these ladies back behind you can tell you more about that.

Exam. Downing: They have already testified.

Q. (By Mr. Trent): Were the employees paid in full after the May 11th notice when they were laid off?

A. I don't believe so because May 11, what day did that fall [142] on?

Exam. Downing: That is something I am very much interested in.

Mr. Tuttle: I don't believe that fell on a pay day, Mr. Trent.

Exam. Downing: While we are on the subject of pay days——

Mr. Trent: May 11th fell on a Tuesday.

Mr. Tuttle: Was it?

Exam. Downing: When was the pay day?

(Testimony of John Tuttle.)

The Witness: For the previous week?

Exam. Downing: Ending when?

The Witness: Friday.

Exam. Downing: So you paid for the work week ending on Friday?

The Witness: That is correct.

Exam. Downing: What day of the week was your pay day?

The Witness: On the following Tuesday.

Exam. Downing: Regularly?

The Witness: Yes, sir.

Exam. Downing: You paid through Friday?

The Witness: That is right.

Exam. Downing: Proceed.

Q. (By Mr. Trent): When the employees were laid off on May 11th, they were not paid off at that time, were they?

A. They were paid up until the Friday and the next Tuesday [143] they got the two days.

Q. They were paid in full after the May 11th lay off?

Exam. Downing: He just told you they weren't.

The Witness: I just told you they weren't, Mr. Trent.

Q. (By Mr. Trent): What do these days that the employees—back to the shutdown of May 11th, or rather the June 1st, shutdown, did the company ever operate any more after June 1st?

A. Yes, there was one table, I believe, we were short on 150 sprinklers.

Q. Just answer my question. A. Yes.

(Testimony of John Tuttle.)

Q. They did operate again?

A. Yes, do you want to know how much?

Exam. Downing: I'd like to know, Mr. Trent, if you are not going to ask him.

Mr. Trent: I will ask questions and if I omit anything you can ask him.

Exam. Downing: You may finish your answer.

A. (Continuing) Well, sir, we had an order came in, from the United States Government, I believe one from the government but it was a contract to the government, we were short on 100 foot sprinklers, wasn't too many.

Q. Then you did have production after June 1st?

A. On a limited scale, yes, sir.

Exam. Downing: When did you shut down completely? [144]

The Witness: Well, it was just that two days I believe and then that was all, just enough to get the order out.

Q. (By Mr. Trent): What two days were they?

A. I couldn't tell you exactly.

Exam. Downing: In June?

The Witness: Yes, it was, wait a minute, yes, it was in June, I believe.

Q. (By Mr. Trent): Did you ever have any production after the union filed the petition for the election, did you ever have any production in that plant in Carterville, Illinois, after the union filed objections to the election, which was held on June 17th, objections were filed on June 22nd, was there ever any production after that date?

(Testimony of John Tuttle.)

A. Could I ask a question to one of the ladies behind you to find out?

Exam. Downing: You will have to answer of your own knowledge.

The Witness: I don't know of my own knowledge, I could ask one of the ladies.

Exam. Downing: You will just have to answer no.

Q. (By Mr. Trent): But as far as you know there wasn't any after June 22nd?

A. I said I didn't know, I didn't say that, I don't remember whether it was before June 22nd or after June 22nd.

Q. Do you have any records there? [145]

A. Not of the last two days that we manufactured the 100 foot sprinklers, no, sir, I don't. I could probably go to the payroll records and find out.

Q. You know it was in June?

A. No, I don't, well it was in June but I don't know whether it was before June 22nd or after June 22nd.

Q. That wasn't my question, you knew it was some time in June, did you not?

A. It was either in June or some time in July.

Q. I understand your testimony of a moment ago that it was some time in June. What day did you decide to close this plant down, Mr. Tuttle?

A. What do you mean? Stop production?

Q. Stop production, major production.

A. June 1st, that is right, on June 1st.

(Testimony of John Tuttle.)

Q. And at the time that you decided to stop production you had received the union's notice that it represented the employees for bargaining rights, hadn't you? A. That morning.

Q. That afternoon you called Mr. Andrews?

A. I called him that morning.

Q. After you received notice or before?

A. Afterwards.

Mr. Trent: That is all.

Exam. Downing: Anything further? [146]

Mr. Andrews: I had one but it slipped my mind. No, sir.

Exam. Downing: That's all.

(Witness excused.) [147]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 2-A

[Title of Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the A. M. Andrews Co. of Oregon, by A. M. Andrews, its President; the International Association of Machinists, A.F.L., by Fred Carstens, Grand Lodge Representative; and William F. Trent, Counsel for the General Counsel of the National Labor Relations Board, Fourteenth Region, St. Louis, Missouri, that the A. M. Andrews Co. of Oregon is and has been at all times material hereto a cor-

poration duly organized under and existing by virtue of the laws of the State of Oregon, with its principal office and place of business located at Portland, Oregon.

A. M. Andrews of Illinois, Inc., is a corporation duly organized and existing under and pursuant to the laws of the State of Illinois, with its principal office and place of business in Carterville, Illinois, engaged in the manufacture of plastic sprinklers. A. M. Andrews of Illinois, Inc. commenced manufacturing operations in the City of Carterville, State of Illinois, in the month of April, 1954.

The total dollar value and amount of all sales made by A. M. Andrews Co. of Oregon during the 12 month period ending June 30, 1954, is $943,000.00 more or less, and the total dollar value and amount of all sales of said corporation for the first seven months of the year 1954 was in the amount of $573,-000.00 more or less. The total dollar value and amount of all the products sold and shipped directly to points outside the State of Oregon by said corporation during the 12 month period ending June 30, 1954, amounted to $791,000.00 more or less, and the total dollar value and amount of all products sold and shipped directly to points outside the State of Oregon during the first seven months of the year 1954 amounted to in excess of $210,000.00. The total dollar value and amount of all purchases made by said corporation and shipped to the corporation from states other than the State of Oregon for the period expiring June 30, 1954, amounted to $359,000.00, more or less, and the total dollar value

and amount of all purchases shipped to said corporation from outside the State of Oregon during the first seven months of the year 1954 amounted to in excess of $120,000.00.

The names of the officers of the A. M. Andrews Co. of Oregon, the amount of their stock ownership in the corporation, and their addresses are as follows:

President: A. M. Andrews, 345 shares, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

Vice President: Alex Marshall, 16 shares, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

Treasurer: Norman Brown, 1 share, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

Secretary: Ray H. Lesher, 1 share, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

(On July 26, 1954, the resignation of Ray H. Lesher, as Secretary, was accepted. Norman H. Brown was elected to replace him.)

It is also agreed that this stipulation may be used as evidence in the hearing in the above entitled cause.

A. M. ANDREWS CO. OF OREGON
/s/ By A. M. ANDREWS, President
/s/ By NORMAN L. BROWN, Secretary
INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL,
/s/ By FRED CARSTENS,
Grand Lodge Representative
/s/ By WILLIAM F. TRENT,
Counsel for the General Counsel National Labor Relations Board

GENERAL COUNSEL'S EXHIBIT No. 2-B

[Title of Cause.]

STIPULATION

It is hereby stipulated and agreed by and between A. M. Andrews of Illinois, Inc. by A. M. Andrews, its president; the International Association of Machinists, A.F.L., by Fred Carstens, Grand Lodge Representative; and William F. Trent, Counsel for the General Counsel of the National Labor Relations Board, Fourteenth Region, St. Louis, Missouri, that A. M. Andrews of Illinois, Inc., is a corporation duly organized under and existing by virtue of the laws of the State of Illinois, with its principal office and place of business located in Carterville, Illinois. Articles of Incorporation were issued by the State of Illinois on the 23rd day of February, 1954, and said corporation actively commenced the business of manufacturing plastic sprinkling hose during the month of April, 1954.

The total dollar value and amount of all sales made by A. M. Andrews of Illinois, Inc., during the period commencing with its organization and ending with the 31st day of July, 1954 was in the amount of $26,000.00 more or less. The total dollar value and amount of all the products sold and shipped directly to points outside the State of Illinois by said corporation during the period of its active operation ending July 31, 1954 was in the amount of $22,000.00 more or less. The total dollar value and amount of all purchases made by said corporation

and shipped to the company from states other than the State of Illinois during the period of its operation was in the amount of $21,370.00 more or less.

The names of the officers of the A. M. Andrews of Illinois, Inc., and their addresses are as follows, together with their stock ownership:

President: A. M. Andrews, 1 share, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

Vice-President: John A. Tuttle, 1 share, Carbondale, Illinois.

Treasurer: Norman Brown, 1 share, 4621 Beaverton-Hillsdale Highway, Portland, Oregon.

Secretary: Ray H. Lesher, 1 share, Equitable Building, Portland, Oregon.

It is also agreed that this stipulation may be used as evidence in any hearing of the above entitled case.

A. M. ANDREWS OF ILLINOIS, INC.,

/s/ By A. M. ANDREWS, President

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

/s/ By FRED CARSTENS,
Grand Lodge Representative

/s/ WILLIAM F. TRENT,
Counsel for the General Counsel National Labor Relations Board

[Endorsed]: No. 14866. United States Court of Appeals for the Ninth Circuit. A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., Petitioners and Respondents, vs. National Labor Relations Board, Respondent and Petitioner. Transcript of Record. Petition for Review and Petition for Enforcement of Order of The National Labor Relations Board.

Filed: October 10, 1955.

Supplemental Filed October 26, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14866

A. M. ANDREWS COMPANY OF OREGON and A. M. ANDREWS OF ILLINOIS, INC.,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE OR FOR REVIEW OF A FINAL ORDER, Etc.

Petition for leave to adduce additional evidence or for review of a final order of the National Labor

Relations Board and an order that the said final order of the National Labor Relations Board be set aside.

A. M. Andrews Company of Oregon, hereinafter referred to as "Andrews Oregon," and A. M. Andrews of Illinois, Inc., hereinafter referred to as "Andrews Illinois," and collectively referred to herein as "the petitioners" petition this court for an order that additional evidence be taken before the National Labor Relations Board, herein referred to as "the Board," its members, agent or agency, and be made a part of the transcript in the proceedings entitled "A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., and International Association of Machinists, A.F.L., Case No. 14-CA-1208, 112 N.L.R.B. No. 89," or for review of the decision and order in said case and an order of this court that the same be set aside.

(1) This court has jurisdiction of the subject matter of this proceeding by virtue of Section 10 (e) and (f) of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C.A. § 141, et seq., herein referred to as "the Act."

(2) The Board is an agency of the United States created by Section 3 of the National Labor Relations Act, as amended by Labor Management Relations Act, 1947, 49 Stat. 449, 29 U.S.C.A. § 151, et seq.

(3) A. M. Andrews Company of Oregon is an Oregon corporation with its principal place of busi-

ness and plant at Portland, Oregon. Its capital stock is owned 345 shares by A. M. Andrews, 16 shares by Alex Marshall, 1 share by Norman Brown and 1 share by Ray H. Lesher.

(4) A. M. Andrews of Illinois, Inc., is an Illinois corporation and from April 27, 1954, until June 1, 1954, it had its principal place of business and plant at Carterville, Illinois. Since June 1, 1954, except for three or four days, it has done no work in Carterville or elsewhere. The capital stock of Andrews Illinois consists of four shares which are owned by A. M. Andrews, John A. Tuttle, Norman Brown and Ray H. Lesher.

(5) The business of Andrews Oregon is the manufacture and sale of plastic lawn sprinklers. During the two months of 1954 that Andrews Illinois operated, it, too, manufactured and sold plastic lawn sprinklers. All of the pertinent events in this matter happened during the year 1954 and for that reason the year will be omitted.

Andrews Illinois entered Carterville as the result of negotiations between A. M. Andrews, Godfrey Hughes of Southern Illinois, Inc., and a group of Carterville industrialists, including Messrs. Hooker, Hayton and Steffes, who erected a building and rented it to Andrews Illinois.

(6) Andrews Illinois began operations on April 27, 1954, with five or six employees. On May 11 the plant was shut down and the employees were laid off with notice that the layoff was occasioned by lack of orders. Work was resumed on May 26.

(7) On May 27 the International Association of Machinists, A.F.L., herein referred to as "the Union," wrote Andrews Illinois that a majority of its employees had authorized it to represent them and requested recognition and a meeting for the purposes of negotiation.

(8) On June 1 this letter was received. Mr. Tuttle, the plant manager, called Mr. Andrews in Portland, Oregon, who directed that the plant be closed as of closing time that day. Such a notice was posted. A committee of businessmen from Carterville, including Messrs. Hughes, Hooker, Steffes and Hayton, who had arranged for the financing and construction of the plant in Carterville, arrived at the plant about 2:00 p.m. At the direction of this committee of businessmen a meeting of the employees of Andrews Illinois was held and two ballots were taken among said employees.

(9) The plant closed on June 1, 1954, and except for two or three days work to complete a government order the plant has remained closed ever since. On August 3, 1954, the inventory and machinery were shipped to Portland.

(10) The complaint alleging certain unfair labor practices was filed on June 28 by the General Counsel of the Board. On August 27 it was amended.

(11) The hearing was held in St. Louis, Missouri, on September 20 before George A. Downing, Trial Examiner. Mr. William F. Trent appeared for the General Counsel, Messrs. Fred Carstens of St.

Louis, Missouri, and Hubert Rushing of Carterville, Illinois, appeared for the Union, and Messrs. A. M. Andrews and John A. Tuttle appeared for the petitioners. Both Mr. Andrews and Mr. Tuttle are laymen.

(12) The Intermediate Report and Recommended Order of the Trial Examiner was filed on October 30, 1954. This report addressed itself to three problems: "(1) Whether respondents (the petitioners herein) are responsible for the acts and statements of the businessmen's committed (sic) on June 1; (2) Whether the shutdown was a lockout which was made to discourage Union membership; and (3) Whether respondent Oregon (herein Andrews Oregon) was a co-employer of the Carterville employees or was otherwise responsible for remedying the unfair labor practices which are found herein."

(13) The Trial Examiner found that the committee of businessmen who came to the plant on June 1 and who conducted the meeting were acting as agents for Andrews Illinois and said company was bound by their acts.

(14) The Trial Examiner likewise found that the shutdown on June 1 was made to discourage Union membership and not for economic reasons such as an inventory that was too large and losses that were mounting.

(15) The Trial Examiner found that Andrews Oregon was not a co-employer of the Carterville employees; that it had not "actively participated in the commission of the unfair labor practices" and

that it would not be held responsible for them.

(16) A request for an extension of time and a supporting affidavit were filed by counsel for petitioners and on December 9, 1954, "Exceptions of Respondents to the Intermediate Report and Recommended Order of the Trial Examiner * * *" and "Brief in Support of Exceptions * * *" were filed in which certain exceptions including the finding that the Board had jurisdiction and that an unfair labor practice had been committed and requested that the record be reopened so that further evidence as to the economic necessity for the plant closure could be taken. The additional evidence which the petitioners sought to adduce was not brought out in the original hearing because both Mr. Andrews and Mr. Tuttle were laymen and they did not understand the purpose or the scope of the hearing, and as laymen were unable to get the proper evidence pertinent to the financial condition of Andrews Illinois into the record. This evidence is material because it would show that Andrews Illinois plant was closed on June 1 because of the large inventory on hand, the huge losses sustained, and the poor demand for the product manufactured and not as an unfair labor practice.

(17) On May 10, 1955, the Decision and Order of the Board, hereinafter called the "Order" was entered, adopting the findings, conclusions or recommendations of the Trial Examiner, except that it held that Andrews Oregon was responsible for remedying the unfair labor practices in question.

(18) The Order is a final order and directly affects petitioners in that they are required to compensate certain employees of Andrews Illinois from June 1 to August 3, 1954, and more particularly it affects Andrews Oregon in requiring it to compensate said employees of Andrews Illinois for an alleged unfair labor practice with which it had no connection.

(19) The Board erred in its conclusion of law that it had jurisdiction of the matter and in its denial of petitioners' request that the record be reopened to take additional evidence.

(20) There is no substantial evidence on the record considered as a whole to support the Board's finding that there was an unfair labor practice by Andrews Illinois.

(21) There is no evidence on the record considered as a whole to support the Board's finding that Andrews Oregon and Andrews Illinois constitute a single employer and that Andrews Oregon is responsible for remedying the alleged unfair labor practices of Andrews Illinois.

(22) The Board's order that petitioners, and especially Andrews Oregon, cease and desist from the alleged unfair labor practices and that the employees of Andrews Illinois be paid from June 1 to August 3 is contrary to law, arbitrary and capricious and unsupported by substantial evidence on the record of the case considered as a whole.

Wherefore, your petitioners pray:

1. That a certified copy hereof be served upon the Board;

2. That the Board be required to certify to this court a transcript of the record of proceedings wherein the Order was entered, including the entire record before the Board in such case, together with the Intermediate Report and Recommended Order of the Trial Examiner, Request for Extension of Time to File Exceptions to Intermediate Report, Exceptions of Respondents to the Intermediate Report, Brief in support of such exceptions, and the Decision and Order of the Board in such case;

3. That this court enter an order that additional evidence be taken before the Board, its members, agent or agency, on the question of (a) whether the shutdown of Andrews Illinois was occasioned by economic necessity; and (b) the relationship of Andrews Oregon and Andrews Illinois; and (c) the nature and kind of business of said petitioners and other questions, and that the same be made a part of the transcript and record of the proceedings entitled "A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., and International Association of Machinists, A.F.L., Case No. 14-CA-1208, 112 N.L.R.B. No. 89; or

4. That said proceedings, findings, conclusions and order be reviewed by this court and that said order be set aside, vacated, nullified or the Board be ordered to dismiss the complaint and the petitioners; or

5. That this court grant to petitioners such other and further relief as may be just and proper.

/s/ ALFRED A. HAMPSON, JR.,
Attorney for Petitioners

[Endorsed]: Filed September 1, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER

The National Labor Relations Board by its Assistant General Counsel pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 et seq.) hereinafter called the Act, files this answer to the petition to review in the above entitled proceeding.

1. The Board admits the allegations of paragraphs 1 and 2 of the petition to review.

2. With respect to the allegations of paragraphs 3 through 22 inclusive the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

3. Insofar as the petition to review incorporates a motion to adduce additional evidence, the Board prays reference to its Opposition to said motion, filed herewith.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board, were and are in all respects valid and proper under the Act, and pursuant to Section 10 (c) of the Act, respectively requests this honorable Court to enforce its order issued against petitioners on May 10, 1955, in the proceedings designated on the records of the Board as Case No. 14-CA-1208 entitled "A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., International Association of Machinists, AFL."

5. Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and files with the Court a transcript of the entire record in the proceedings before it.

Wherefore, the Board prays that the Court enter a decree denying the petition to review and enforcing in whole said order of the Board.

Dated at Washington, D. C., this 5th day of October, 1955.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel National
Labor Relations Board

[Endorsed]: Filed October 10, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONERS INTEND TO RELY

Come now petitioners and file this, their statement of points on which they intend to rely on their petition for leave to adduce additional evidence or for review of a final order of the National Labor Relations Board, to wit:

(1) Additional evidence should be adduced pertaining to the financial condition of the petitioners because such additional evidence would be material (a) to whether the shutdown of A. M. Andrews of Illinois, Inc., on June 1, 1954, was occasioned by economic necessity; (b) to what period of time said shutdown lasted; and (c) to the nature of the relationship existing between petitioners, and such evidence was not adduced at the hearing before Trial Examiner George A. Downing on September 20, 1954, because both Mr. Andrews and Mr. Tuttle were laymen, and as such did not understand the scope of the hearing nor were they able to get such evidence into the record.

(2) The National Labor Relations Board erred in that there is no evidence on the record as a whole to support its finding (a) that A. M. Andrews Company of Oregon, and A. M. Andrews of Illinois, Inc., constitute a single employer; (b) that A. M. Andrews Company of Oregon was responsible for the alleged unfair labor practice of A. M. Andrews of Illinois, Inc.; (c) that the employees of A. M.

Andrews of Illinois, Inc., be paid from June 1 to August 3, 1954; and (d) that the employees of A. M. Andrews of Illinois, Inc., be paid by A. M. Andrews Company of Oregon.

Submitted this 11th day of November, 1955.

/s/ RALPH R. BAILEY
/s/ ALFRED A. HAMPSON, JR.

[Endorsed]: Filed November 14, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD ON PETITION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE OR FOR REVIEW OF FINAL ORDER

Come now petitioners and designate the following portion of the record and proceedings herein to be contained in the record on their petition for leave to adduce additional evidence or on review of the final order of the National Labor Relations Board, to wit:

(1) Trial Examiner Downing's Intermediate Report and Recommended Order, dated October 28, 1954; Order Transferring case to the Board, dated October 28, 1954, together with affidavit of service and United States post office return receipts thereof.

(2) Petitioners' Request for Extension of Time to File Exceptions to Intermediate Report and

Recommended Order of Trial Examiner and Brief in Support of Said Exceptions.

(3) Petitioners' Exceptions to the Intermediate Report and Recommended Order, including the request that the record be reopened, received December 6, 1954.

(4) Decision and Order issued by the National Labor Relations Board on March 10, 1955, together with affidavit of service and United States post office return receipts thereof.

(5) Page 25, line 2, through page 27, line 5; page 102, line 2, through page 113, line 20; page 125, line 14, through page 147, line 3, of stenographic transcript of testimony taken before Trial Examiner George A. Downing on September 20, 1954.

(6) Exhibit No. 2 and Exhibit No. 2-B introduced in evidence before the Trial Examiner George A. Downing on September 20, 1954.

(7) Petitioners' Petition for Leave to Adduce Additional Evidence or for Review of a Final Order of the National Labor Relations Board, and an order that the said final order of the National Labor Relations Board be set aside, filed August 30, 1955.

(8) Statement of Points on Which Petitioners Intend to Rely.

(9) This designation of record.

Respectfully submitted,

/s/ RALPH R. BAILEY,
/s/ ALFRED A. HAMPSON, JR.

[Endorsed]: Filed November 14, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the findings of fact recited in Sections I through III B-1 of the Intermediate Report in this case are supported by substantial evidence on the record as a whole, save and except the date of August 3, being the date of final shutdown of the Carterville plant, as the same appears on page 2, line 32, and page 4, line 35, of said Intermediate Report, and that the Court should accept such findings of fact, although the evidence in support thereof will not be printed in the record.

Dated at Portland, Oregon, this 13th day of December, 1955.

/s/ MAGUIRE, SHIELDS, MORRISON & BAILEY,
Attorneys for Petitioners

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel National Labor Relations Board

[Endorsed]: Filed December 23, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH RESPONDENT INTENDS TO RELY

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, respondent, in conformity with the rules of this Court, hereby states the following points on which it intends to rely:

1. The Board properly found that A. M. Andrews Company of Oregon and A. M. Andrews of Illinois, Inc., petitioners, were a single "employer" within the meaning of the Act.

2. Substantial evidence supports the Board's finding that petitioners interfered with, coerced and restrained their employees in violation of Section 8 (a) (1) of the Act.

3. Substantial evidence on the record considered as a whole supports the Board's finding that petitioners discriminatorily closed down their Illinois plant in violation of Section 8 (a) (3) and (1) of the Act.

4. The Board's order is valid and proper.

Dated at Washington, D. C., this 21st day of December, 1955.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel National
Labor Relations Board

Certificate of Service attached.

[Endorsed]: Filed December 27, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

COUNTERDESIGNATION OF RECORD TO BE PRINTED

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, respondent, and designates the following portion of the record to be printed in accordance with the rules of this Court:

The stipulation as to facts not contested, dated December 13, 1955.

Dated at Washington, D. C., this 22nd day of December, 1955.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board

[Endorsed]: Filed December 27, 1955. Paul P. O'Brien, Clerk.